



Public School Capital Outlay Oversight Task Force

2006 ANNUAL REPORT

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***PUBLIC SCHOOL CAPITAL OUTLAY
OVERSIGHT TASK FORCE***

**2006
ANNUAL REPORT**

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REPORT
of the
PUBLIC SCHOOL CAPITAL OUTLAY OVERSIGHT TASK FORCE

Introduction

As the "direct descendent" of various task forces that were created in response to the *Zuni* lawsuit, the public school capital outlay oversight task force (PSCOOTF) is the statutorily created entity (Laws 2005, Chapter 274) charged with monitoring the implementation of the standards-based process established in provisions of the Public School Capital Outlay Act and the Public School Improvements Act, monitoring the revenue streams that fund the standards-based process, overseeing the work of the public school facilities authority (PSFA) and making annual recommendations to the legislature and the executive before the beginning of each legislative session.

The legislature established the standards-based public school capital outlay process in response to the judge's order in the *Zuni* lawsuit that found the state to be in violation of the New Mexico constitution's uniformity clause (Article 12, Section 1)¹. Filed by parents on behalf of their children in the Zuni public schools and later joined by the Gallup-McKinley county and Grants-Cibola county public schools, the *Zuni* lawsuit successfully challenged the constitutionality of New Mexico's process for funding public school capital outlay that was then in effect. In 1999, Judge Joseph L. Rich, eleventh judicial district, gave the state until July 28, 2000 to correct past inequities and establish and implement a uniform system of funding for future public school capital improvements. Later the court extended the deadline in order to evaluate the legislation recommended by a task force established in 2000 (which is a predecessor of the current oversight task force) and subsequently enacted in 2001.

The current task force consists of 24 members, including members of the legislature and the executive, certain designated public members, some of whom have expertise in finance and

¹"A uniform system of free public schools sufficient for the education of, and open to, all the children of school age in the state shall be established and maintained" (Article 12, Section 1, New Mexico constitution).

education, and superintendents of school districts or their designees, two of whom must be from districts that receive federal impact aid grants. Appendix 1 provides a listing of the members who served during the 2006 interim.

Previous reports of the public school capital outlay task forces created by Laws 2001, Chapter 338 and re-created by Laws 2004, Chapter 125 provide details related to the background and development of the new, statewide standards-based public school capital outlay process that is now beginning its fourth implementation cycle. While this report focuses primarily on the work of the task force during the 2006 interim, the following background information is provided for perspective on the issues before the task force.

Background

The earliest work that addressed public school capital outlay funding discrepancies was performed by a task force established by the state department of public education (now the public education department) in 1998 and chaired by Representative Ben Lujan. This task force contracted with MGT of America, a consulting firm, to conduct a comprehensive review of issues concerning New Mexico public school capital outlay, including conducting a sampling assessment of 35 districts.

The first legislatively created task force was established in 2000 in Senate Joint Memorial 21 by the forty-fourth legislature, second special session, in response to an order by *Zuni* lawsuit Judge Joseph L. Rich giving the state until July 28, 2000 to correct past inequities and establish and implement a uniform system of funding for future public school capital improvements. Many of this first public school capital outlay task force's recommendations, issued in December 2000, were adopted in Laws 2001, Chapter 338, including statutory authorization to continue its work.

These recommendations, which were enacted in Laws 2001, Chapter 338, focused on establishment of a transitional three-pronged framework for public school capital outlay that:

- 1) corrected past inequities by providing 100 percent state funding to immediately remedy health and safety deficiencies identified in a one-time initial assessment of every public school throughout the state;
- 2) continued to fund the substantial backlog of critical capital outlay needs of school districts that had substantially used up their own resources for public school capital improvements; and
- 3) implemented a long-term public school capital improvement process based on adequacy standards.

In addition, this measure increased the Public School Capital Improvements Act (also called "SB 9" or "the two-mill levy") state guarantee from \$35.00 per mill per unit to \$50.00 per mill per unit (the first such increase in more than 20 years) and designated supplemental severance tax bonds to be a permanent revenue source for public school capital outlay.

In April 2001, Judge Rich appointed the Honorable Dan McKinnon, former state supreme court justice, as a special master to review the progress the state had made in correcting past inequities and in developing and implementing the new capital outlay process. Justice McKinnon concluded "that since 1998 the state has made a substantial effort to rectify the disparities..." in funding for school facilities and that "... at this time the state is in good faith and with substantial resources attempting to comply with the requirements of Judge Rich's previous directions". Adopting the report of the special master in May 2002, Judge Rich reserved the right to hold status conferences to monitor and review the state's progress in addressing issues raised by the *Zuni* lawsuit.

One of the issues raised in the special master's report was the disqualifying effect of direct legislative appropriations to individual schools for capital outlay purposes. The report directed that these appropriations be taken into account in the funding formula that was to go into effect after September 1, 2003. In response to this directive, the 2003 legislature amended the funding formula (Laws 2003, Chapter 147) to provide an offset against state grant awards for public school capital outlay equal to a percentage of any funds received by a school district as a direct legislative appropriation using the local/state-share formula. The offset provision also applied to legislative appropriations for educational technology, with the reduction credited against the school district's annual distribution under the Education Technology Equipment Act.

Legislation enacted in 2004 made a number of additional improvements to the capital outlay process and provided \$57 million of additional funding for deficiency correction and continuation projects (Laws 2004, Chapter 125). It enacted many of the recommendations of the task force from the 2003 interim, including a recommendation to extend the life of the task force for an additional year and added provisions relating to what are called "recalcitrant districts". These provisions would allow the public school capital outlay council (PSCOC) to bring a court action against a school district if it determines that a school district's facilities are below the minimum standard required by the constitution and that the district has consistently failed to take action. The court action could result in the imposition of a property tax in the school district to

pay the district's required share of the costs of bringing the school facilities up to the adequacy standards. The task force considered the enactment of the recalcitrant district provisions as another important step for ensuring that the new process will comply with the directives of the court in addressing the *Zuni* remedies.

Legislation enacted in 2005 added a number of refinements to the standards-based awards process as a result of experience gained during the pilot year, including many of the recommendations of the task force from the 2004 interim (Laws 2005, Chapter 274). Among those recommendations was completion of the deficiencies correction program with specific emphasis on the correction of serious roof deficiencies. In addition, this legislation created a separate roof repair and replacement initiative and allocated up to \$30 million per year for fiscal years 2006 and 2007 for this initiative. The lease assistance program enacted in 2004 was modified to increase the maximum grant award from \$300 per member to \$600 per member and to extend this lease assistance to charter schools in their initial year of operation. In response to the task force's focus on improving maintenance of public school buildings, the SB 9 guarantee amount was increased from \$50.00 per mill per unit to \$60.00 per mill per unit with automatic, yearly increases based upon the consumer price index (CPI). Also, a framework was established to allow the PSCOC to waive a portion of the local share when funding a project. Finally, new charter schools are now required to meet educational occupancy standards before being chartered and guidelines were established to assist in the transition of charter schools to public facilities by 2010.

As it continues to build on the work of previous task forces to address the implementation of a statewide public school capital outlay program, the current PSCOOTF focuses upon its statutory charge to monitor the implementation of the new standards-based public school capital outlay program and also to monitor the adequacy of the current existing permanent revenue streams (see Appendix B for statutory provisions establishing the PSCOOTF and its duties).

During the 2005 interim, the first year of the task force's existence in its current iteration, the members reviewed the statewide assessment of school facilities, the deficiencies correction program, the roof deficiency correction program, PSCOC awards, lease payment awards, the development of educational technology adequacy standards as directed by HB 511 from the 2005 legislature and a number of issues related to charter schools. The task force also explored a number of new subjects, including high-growth districts and schools, issues related to rural and very small schools, alternative capital financing options, including tax increment financing and industrial revenue bonds, and opportunities for energy-efficient school buildings.

Acting on the recommendations of the PSCOOTF, the 2006 legislature passed and the governor signed into law (Laws 2006, Chapter 95, p.v.) legislation amending the Public School Capital Outlay Act to:

- increase distributions for lease payments owed by schools, including charter schools;
- provide for partial state funding to school districts for the development of five-year facilities master plans, including full funding for some of the smaller districts;
- allow the use of state funding for demolition of abandoned school buildings;
- create a process to identify and correct serious outstanding deficiencies at the New Mexico school for the blind and visually impaired and the New Mexico school for the deaf, if funding is provided;
- exempt all PSFA staff from provisions of the Personnel Act;
- create a program for advancing to a school district the local matching share otherwise required if the money is for a "qualified high priority project", which is defined as a project in a high-growth area (also defined in the legislation). The legislation provides that, once a school district receives an advance of the local share, it is no longer eligible to receive state funding for future projects until the amount advanced is fully recouped by the amounts that would otherwise have been granted by the state.

Additional legislation passed and signed into law:

- required districts to submit a five-year facilities plan to the PSFA before beginning any PSCOC project;

- eased restrictions on the limits on school district cash balances and allowed the balances to be used for the local match required for PSCOC grant awards;
- created a new school development fund to provide funding for school districts for one-time operational costs associated with the opening of new schools;
- amended the Procurement Code to allow PSFA to be its own central purchasing office;
- appropriated funding to continue the development and implementation of the facilities information management system (FIMS) program, a uniform web-based system to manage maintenance for school district facilities; and
- allocated funding to improve the indoor air quality of public schools.

The recommendations contained in this PSCOOTF report represent the policy development work of the task force and provide for ongoing monitoring of the standards-based capital outlay program to ensure success toward achieving the goal of bringing all schools up to the adequacy standards and working to keep them there. During the 2006 interim, the work of the task force, the charter school subcommittee and the advisory groups was assisted by a team of professional staff from the legislative council service, the legislative education study committee, the legislative finance committee, the department of finance and administration, the public education department and the PSFA. The task force expresses its appreciation for the assistance of the staff in furthering its work.

Public School Capital Outlay Oversight Task Force
Work During the 2006 Interim

In addition to its May organizational meeting, the task force held four full task force meetings during the 2006 interim. Early in the interim, the PSCOOTF received an update on the *Zuni* lawsuit from Mr. Frank Weissbarth, Esq., the assistant attorney general assigned to the case. Mr. Weissbarth informed the task force that, at the request of the plaintiffs in the lawsuit, Judge Joseph L. Rich held a status conference on March 20, 2006, during which the plaintiffs outlined their concerns with the standards-based process and requested an evidentiary hearing on the process. At the conclusion of the conference, the court ordered an evidentiary hearing to be held and directed counsel to work together on a schedule. The state's attorney asked the court to direct the plaintiffs to outline the areas with which they had concerns about the process, particularly with regard to the findings of the special master, and the court so directed. During the course of the interim, the plaintiffs' attorneys worked with a PSCOOTF-appointed work group to address the plaintiffs' concerns with the standards-based process. No evidentiary hearing had been scheduled by the end of the 2006 interim.

The PSCOOTF also received testimony about the statewide implementation of the facility information management system (FIMS) and school district facilities master plans; an update on the PSFA's efforts to improve its services, as well as concerns about its focus on regulation and compliance rather than assistance; cooperation among school districts, counties and municipalities regarding issues related to growth; energy-efficient school buildings; factors affecting construction costs; adequacy of current long-term funding revenue streams for the standards-based capital outlay funding process; an update on development and implementation of educational technology adequacy standards as required in HB 511 as passed by the 2005 legislature; revision of current PSFA oversight and review responsibilities; concerns about calculation of the state match required for PSCOC projects, as well as concerns about offsets for direct appropriations; and cost savings realized by construction industries division's (CID) designation of portable classrooms as temporary buildings.

In this, the third year of implementation of the standards-based public school capital outlay process, the PSCOOTF heard testimony at nearly every meeting about the statewide

adequacy standards, including expressions of concern over the process for timely modifications and adjustments to the standards; balancing local control and educational progress with cost effectiveness and economies of scale; alignment of curriculum standards with facility needs; high school redesign efforts and their effect on the adequacy standards; other school program expansions and their effect on the adequacy standards; utilization analyses of facilities and community needs; and the effect of high growth on adequacy standards and the standards-based process.

With very full agendas at all task force meetings, the PSCOOTF appointed work groups to take a closer look at such issues as resources for districts unable to fund their respective projects beyond adequacy and developer-financing of public schools.

In response to requirements in the 2006 legislation that the task force address issues related to capital outlay for charter schools (Laws 2006, Chapter 94), the task force appointed a subcommittee to examine issues related to funding for capital outlay for charter schools and to make recommendations to the 2007 legislature and the executive. Accordingly, the charter school subcommittee met three times to develop recommendations to the full task force for possible endorsement of legislation.

At the final meeting of the interim, the co-chairs appointed a subcommittee to review the task force's final recommendations for legislative endorsement. The subcommittee met a single time just prior to the beginning of the 2007 legislature.

Highlights of Recommendations and Proposed Legislation

The 2006 recommendations of the PSCOOTF continue the efforts of the earlier task forces in terms of monitoring the standards-based process established in the Public School Capital Outlay Act while continuing to be mindful of commitments to the *Zuni* lawsuit.

The PSCOOTF endorsements are included in five separate bills. The majority of the recommendations, however, are found in one relatively comprehensive "omnibus" bill. This bill addresses revision of current PSFA review and oversight responsibilities, provides some of the enabling legislation to implement provisions of Constitutional Amendment 2 to allow school districts and charter schools to enter into lease-purchase agreements using public school capital outlay funds, provides funding options for charter school facilities, allows the use of PSCOC grant awards to purchase privately owned facilities under certain conditions, creates a mechanism to provide funding for certain districts that cannot exceed adequacy standards, requires the council to look to efficient and flexible use of space, increases the SB 9 state guarantee distribution, increases the amount of funding available for lease-payment assistance by charter schools and school districts and expands the uses of HB 33 funding.

The remaining bills include an appropriations bill, a measure to create an opportunity fund to provide grant assistance to those districts that cannot afford to fund facilities that exceed the adequacy standards, a measure to provide a procedure by which state-chartered charter schools can obtain funding for the local match required for PSCOC grant assistance, a bill requiring local districts to share bond proceeds with charter schools in proportion to the facility needs of the charter school compared to those of the local district's schools and amendments to the Procurement Code to increase accountability of construction managers on public school construction projects.

The "omnibus" bill: The PSCOOTF recommends the following amendments to the Public School Capital Outlay Act:

- per the requests of many school districts and the PSFA, amend existing school construction statutes to (1) exempt school construction projects costing \$200,000 or less from PSFA project approval and to (2) allow the PSCOC, by rule, to exempt other classes or types of school construction from PSFA approval;

- allow offsets from future project awards for direct legislative appropriations to be reduced by 50 percent if the appropriation is for a project that ranks in the top 150 projects statewide and remove the offset from local districts for direct legislative appropriations for state-chartered charter schools located within the district;
- allow grant assistance for school districts to purchase privately owned facilities that are already in use by the district if: (1) the facility meets the statewide adequacy standards; (2) attendance at the facility is at 75 percent of design capacity and attendance at schools at which the students would otherwise be attending is at 85 percent of design capacity; and (3) the school district and project are otherwise eligible for funding except that, when prioritizing the project, the students at the facility would be deemed to be attending other schools in the district;
- provide a mechanism for projects to be funded above the statewide adequacy standards for districts that otherwise would not have the local resources to exceed the standards under the following conditions: (1) the school district is otherwise eligible to apply for a grant under the Public School Capital Outlay Act; (2) the state share for existing grants is 70 percent or more; (3) the district's voters have approved a school property tax rate of at least nine mills; (4) at least 70 percent of the students in the district are eligible for free or reduced-fee lunches; and (5) for the next four years, all of a district's available local resources are committed to pay the local match for projects, thereby making unavailable those resources to exceed the statewide adequacy standards. The amount of the additional award could range from 10 percent to 25 percent of the original total project cost;
- increase lease reimbursement payments from \$600 to \$700 per MEM and allow the per MEM amount and the total funding limitation to increase each year with inflation; extend the time for lease payments to 2020 (from 2010); and allow leased space for direct administrative use to qualify for reimbursement;
- require the PSCOC to consider concepts that promote efficient but flexible utilization of space when adopting criteria for grant assistance;
- give the three remaining deficiencies corrections projects an additional year to finish the corrections; and

- allow lease-purchase agreements to be funded as PSCOC projects if the facility meets statewide adequacy standards (and require the charter school or school district to apply for a grant to bring the facility to adequacy).

The "omnibus" bill also recommends the following amendments to the Public School Capital Improvements Act (SB 9):

- allow voters to impose an additional mill that will be distributed directly to each school in the district, including locally and state-chartered charter schools, based upon the school's MEM on the fortieth day;
- increase the SB 9 state guarantee distribution from \$60 per mill per MEM to \$70 per mill per MEM while retaining the provision that allows yearly increases based upon increases in the consumer price index (CPI); and
- allow school districts to use the SB 9 state guarantee distribution and the local proceeds from the imposition of the millage as a funding source to pay for lease-purchase agreements.

The omnibus bill provides some of the enabling legislation to implement the provisions of Constitutional Amendment 2, passed by voters in the 2006 general election, to allow school districts to enter into lease-purchase agreements using funds from the public school capital outlay fund.

The omnibus bill also includes the following amendments to the Charter Schools Act:

- allow charter schools and school districts to enter into lease agreements under which lease payments are made to the school districts. The lease payments cannot exceed the lease reimbursement rate under the Public School Capital Outlay Act plus actual costs incurred by the districts. Lease payments may be retained by the districts and do not have to be included in the district's cash balance limitation;
- allow charter schools to be housed in a building subject to a lease-purchase agreement after July 1, 2010; and
- require that, upon revocation of the charter of a state-chartered charter school, its facility must revert to the local school district rather than to the state if proceeds from district general obligation bonds were used to finance the facility.

In terms of amendments to the Public School Buildings Act (HB 33), the omnibus bill includes the following:

- allow for imposition of HB 33 millage for six years, rather than the current five years, allow for HB 33 elections to be held concurrently with local board elections and allow proceeds to be used for lease-purchase payments;
- allow a school district to use up to five percent of the total project cost funded with HB 33 revenues to pay for administration of the project, including expenditures for software related to the project, project oversight and district personnel overseeing the project; and
- require that future HB 33 resolutions include the needs of locally chartered and state-chartered charter schools with revenues distributed directly to the charter schools.

The "Money Bill": In this bill, the PSCOOTF recommends the following:

- establishment of criteria for receiving allocations from the educational technology deficiency correction fund and appropriations of \$27 million from the general fund to the educational technology deficiency correction fund to correct serious deficiencies in educational technology infrastructure and \$24 million from the general fund to replace obsolete computers;
- recreating the roof repair and replacement initiative established in the Public School Capital Outlay Act for an additional three years and providing an appropriation of \$30 million from the general fund for the program;
- an appropriation of \$8 million from the general fund to purchase and install portable facilities to be lent to school districts with a demonstrable need; and
- an appropriation of \$13.3 million from the general fund to correct deficiencies at the New Mexico school for the blind and visually impaired and the New Mexico school for the deaf.

The Public School Facility Opportunity Bill: The PSCOOTF recommends creating a new section of the Public School Capital Outlay Act to establish a program to provide grant assistance to school districts that would not be able to afford school facilities that exceed the statewide adequacy standards. The bill creates the "public school facility opportunity fund" and

appropriates money in the "opportunity" fund to the PSCOC to provide grant assistance to qualifying school districts that have submitted applications to the PSCOC in accordance with rules established by the council.

A school district may apply for a grant if the council determines that: (1) the district is otherwise eligible to apply for a grant under the Public School Capital Outlay Act; (2) the state share for existing grants under the act is 70 percent or greater; (3) the district's voters have imposed a school property tax rate of at least nine mills; (4) at least 70 percent of the students in the district are eligible for free or reduced-fee lunches; and (5) for the next four years, any local resources of the district will be spent as the local match for projects, and the district will have no available resources to exceed the statewide adequacy standards.

The bill also provides four funding sources for the public school facility opportunity fund: (1) distribution of a gross receipts tax revenue equal to two percent of the taxable receipts attributable to public school construction statewide as determined by the taxation and revenue department; (2) an allocation to the fund, at the end of each of the next five fiscal years, of one-half of unexpended agency and fund balances that would otherwise revert to the general fund; (3) an amendment of the capital projects acts of 2003 through 2006 to direct that unspent capital project appropriations that would otherwise revert to the general fund shall instead be reverted to the new fund; and (4) a transfer of two percent of all direct legislative appropriations for school construction to the new fund.

State-Chartered Charter Schools Capital Funding Bill: In this bill, the PSCOOTF recommends establishment of a procedure under which state-chartered charter schools can obtain funding for the local match required to receive PSCOC grant assistance. The endorsed legislation provides that an application from a state-chartered charter school must be evaluated as are all other applications under the act, except that the local share must be the same as that of the school district in which the charter school is located, and provides that the award may be made contingent upon the issuance of charter school bonds. The bill authorizes the New Mexico finance authority to issue a maximum of \$20 million in charter school bonds and appropriates the proceeds to the taxation and revenue department to pay the local share of capital projects for state-chartered charter schools. The bill creates the "charter school bonding fund" and pledges the fund to pay debt service on the bonds.

The bill provides the following sources of funding to pay off the bonds: (1) the proportionate state distribution under the Public School Capital Improvements Act (SB 9) attributable to the MEM in the state-chartered charter school; (2) the portion of proceeds from all future SB 9 mill levies attributable to the MEM in the state-chartered charter school; (3) authorization of an additional SB 9 mill with the proportionate amount attributable to the MEM in the state-chartered charter school to the fund, if approved by voters; and (4) gross receipts revenue for any remaining amount of debt not covered by the three previous sources.

School District General Obligation Bonds: The PSCOOTF recommends amending the section of the Public School Code that authorizes school districts to issue general obligation bonds to require local school boards to consider the needs of charter schools before they adopt a resolution proposing the issuance of bonds. If voters approve the resolution, the proposed amendment would require that school districts share the proceeds of the bond sales in proportion to the facility needs of the charter school compared to the needs of the local district's schools.

Construction Manager At Risk: The PSCOOTF also recommends amending the Procurement Code to include the Construction Manager At Risk Act. This measure would provide an alternative method for a local school board, the PSFA or the governing body of a charter school to procure construction. The construction manager at risk would be the general contractor for a project but would also provide preconstruction services and construction management. The bill would allow the governing body to choose between a two-step selection procedure (with a request for qualifications and an interview) and a three-step procedure (with a request for qualifications, a request for proposals and an interview).

Appendix A

PUBLIC SCHOOL CAPITAL OUTLAY OVERSIGHT TASK FORCE

MEMBERSHIP, 2006 INTERIM

**PUBLIC SCHOOL CAPITAL OUTLAY OVERSIGHT TASK FORCE
2006 INTERIM MEMBERSHIP**

Representative Rick Miera, task force co-chair	House Education Committee chair
Senator Cynthia Nava, task force co-chair	Senate Education Committee chair
Senator Ben D. Altamirano	Senate President Pro Tempore
Senator Vernon D. Asbill	Senate minority member
Senator Leonard Tsosie	Indian Affairs Committee member
Senator Joseph A. Fidel	Senate Finance Committee chair
Representative Larry A. Larrañaga	House minority member
Senator Carroll H. Leavell	Senate minority member
Representative Ben Lujan	Speaker of the House
Representative Henry Kiki Saavedra	House Appropriations and Finance Committee chair
Representative W.C. 'Dub' Williams	House minority member
Gary Bland	State Investment Officer
Don Moya for Veronica Garcia	Secretary of Public Education
Katherine B. Miller	Secretary of Finance and Administration
Dr. Leslie Carpenter	Santa Fe Public Schools superintendent
Pancho Guardiola	Cuba Independent School District superintendent (Impact Aid district)
Kilino Marquez	Grants-Cibola County Schools superintendent (Impact Aid district)
Leonard Haskie	Gallup-McKinley County Schools assistant superintendent, Support Services (Impact Aid district)
Elizabeth Marrufo	Las Cruces Public Schools administrator
Cecilia Grimes	Public member with experience in education and finance
Anna Lamberson	Charter school board member, City of Albuquerque Chief Budget Officer
Bud Mulcock	Former business executive, current education lobbyist
Norman Suazo	Architect with expertise in school construction, division chief, Indian Affairs Department
Dr. Moises Venegas	Albuquerque Partnership director, public member
Robbie Heyman (advisory member)	Bond counsel

Appendix B

PUBLIC SCHOOL CAPITAL OUTLAY OVERSIGHT TASK FORCE

STATUTORY AUTHORITY AND DUTIES

"22-24-7. PUBLIC SCHOOL CAPITAL OUTLAY OVERSIGHT TASK FORCE--
CREATION--STAFF.--

A. The "public school capital outlay oversight task force" is created. The task force consists of twenty-four members as follows:

(1) the secretary of finance and administration or the secretary's designee;

(2) the secretary of public education or the secretary's designee;

(3) the state investment officer or the state investment officer's designee;

(4) the speaker of the house of representatives or the speaker's designee;

(5) the president pro tempore of the senate or the president pro tempore's designee;

(6) the ~~[chairmen]~~ chairs of the house appropriations and finance committee, the senate finance committee, the senate education committee and the house education committee or their designees;

(7) two minority party members of the house of representatives, appointed by the New Mexico legislative council;

(8) two minority party members of the senate, appointed by the New Mexico legislative council;

(9) a member of the interim legislative committee charged with the oversight of Indian affairs, appointed by the New Mexico legislative council, provided that the member shall rotate annually between a senate member and a member of the house of representatives;

(10) two public members who have expertise in education and finance appointed by the speaker of the house of representatives;

(11) two public members who have expertise in education and finance appointed by the president pro tempore of the senate;

(12) three public members, two of whom are residents of school districts that receive grants from the federal government as assistance to areas affected by federal activity authorized in accordance with Title 20 of the United States Code, appointed by the governor; and

(13) three superintendents of school districts or their designees, two of whom are from school districts that

receive grants from the federal government as assistance to areas affected by federal activity authorized in accordance with Title 20 of the United States Code, appointed by the New Mexico legislative council in consultation with the governor.

B. The chair of the public school capital outlay oversight task force shall be elected by the task force. The task force shall meet at the call of the chair, but no more than four times per calendar year.

C. Non-ex-officio members of the task force shall serve at the pleasure of their appointing authorities.

D. The public members of the public school capital outlay oversight task force shall receive per diem and mileage pursuant to the Per Diem and Mileage Act.

E. The legislative council service, with assistance from the public school facilities authority, the department of finance and administration, the public education department, the legislative education study committee and the legislative finance committee, shall provide staff for the public school capital outlay oversight task force."

"22-24-8. PUBLIC SCHOOL CAPITAL OUTLAY OVERSIGHT TASK FORCE--DUTIES.--The public school capital outlay oversight task force shall:

A. monitor the overall progress of bringing all public schools up to the statewide adequacy standards developed pursuant to the Public School Capital Outlay Act;

B. monitor the progress and effectiveness of programs administered pursuant to the Public School Capital Outlay Act and the Public School Capital Improvements Act;

C. monitor the existing permanent revenue streams to ensure that they remain adequate long-term funding sources for public school capital outlay projects;

D. oversee the work of the public school capital outlay council and the public school facilities authority as they perform functions pursuant to the Public School Capital Outlay Act, particularly as they implement the statewide-based process for making grant awards;

E. appoint an advisory committee to study the feasibility of implementing a long-range planning process that will facilitate the interaction between charter schools and their school districts on issues relating to facility needs; and

F. before the beginning of each regular session of the legislature, report the results of its analyses and oversight and any recommendations to the governor and the legislature."

Appendix C

PUBLIC SCHOOL CAPITAL OUTLAY OVERSIGHT TASK FORCE

2006 INTERIM WORK PLAN

2006 APPROVED
WORK PLAN AND MEETING SCHEDULE
for the
PUBLIC SCHOOL CAPITAL OUTLAY OVERSIGHT TASK FORCE

Membership

Rep. Rick Miera, Co-Chair
Sen. Cynthia Nava, Co-Chair
Sen. Ben D. Altamirano
Sen. Vernon D. Asbill
Rep. Ray Begaye
Gary Bland
Dr. Leslie Carpenter
Sen. Joseph A. Fidel
Veronica Garcia
Cecilia J. Grimes
Pancho Guardiola
Leonard Haskie
Robbie Heyman

Rep. Larry A. Larrañaga
Sen. Carroll H. Leavell
Rep. Ben Lujan
Kilino Marquez
Elizabeth Marrufo
Katherine B. Miller
Tony Monfiletto
Bud Mulcock
Rep. Henry Kiki Saavedra
Norman Suazo
Dr. Moises Venegas
Rep. W. C. "Dub" Williams

Approved Work Plan

Created by Laws 2005, Chapter 274, Sections 10 and 11, the public school capital outlay oversight task force serves as the permanent entity overseeing the implementation of the work of the public school capital outlay council and the public school facilities authority as they implement the state's standards-based public school capital outlay funding mechanism. The task force consists of 24 members, including the respective secretaries of public education and finance and administration; the state investment officer; the speaker of the house; the president pro tempore of the senate; the respective chairs of the house appropriations and finance and house education committees and the senate finance and senate education committees; four minority party members, two from each house; a member of the Indian affairs committee annually alternating between the senate and house; seven public members, two appointed by the speaker, two appointed by the president pro tempore and three appointed by the governor; and three superintendents, two of whom must be from federal impact aid districts, appointed by the legislative council in consultation with the governor.

Pursuant to statute, the task force will focus on the following activities:

1. monitor the progress and effectiveness of programs administered pursuant to the Public School Capital Outlay Act and the Public School Capital Improvements Act;
2. monitor the existing permanent revenue streams to ensure that they remain adequate, long-term funding sources for public school capital outlay projects;
3. monitor the overall progress of continuing to bring all public school facilities up to the statewide adequacy standards developed pursuant to provisions in the Public School Capital Outlay Act;
4. oversee the work of the public school capital outlay council and the public school facilities authority, particularly as they continue to implement the statewide process for making grant awards;

5. in consultation with the public school capital outlay council, the public education department and the public school facilities authority, study statutory provisions governing the funding of charter school capital outlay facilities, transportation costs and any other capital outlay issues concerning charter schools; and
6. report the results of its analyses and oversight and any recommendations to the governor and the legislature before the start of the 2007 regular legislative session.

Approved Meeting Schedule

<u>Date</u>	<u>Location</u>
May 22	Santa Fe
July 20 - 21	Albuquerque
August 7 - 8	Albuquerque
October 10 - 11*	Albuquerque
November 8 - 9	Santa Fe

Possible subcommittee meeting

September 11	Santa Fe
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*The Legislative Council authorized a meeting outside the Capitol in October.

Appendix D

PUBLIC SCHOOL CAPITAL OUTLAY OVERSIGHT TASK FORCE

FINAL REPORT of the CHARTER SCHOOL SUBCOMMITTEE

FINAL REPORT
of the
PUBLIC SCHOOL CAPITAL OUTLAY OVERSIGHT TASK FORCE
CHARTER SCHOOL SUBCOMMITTEE

A measure passed by the 2006 legislature and signed into law by the governor, SB 600 (Laws 2006, Chapter 94), made a number of amendments to charter school statutes. The measure also included a temporary provision, which states, in pertinent part:

The public school capital outlay oversight task force, in consultation with the public school capital outlay council, the public education department and the public school facilities authority, shall study statutory provisions governing the funding of charter school capital outlay facilities, transportation costs and other capital outlay issues concerning charter schools....

The legislation also requires the task force to make recommendations to the legislative education study committee, the legislative finance committee and the executive before the 2007 legislative session.

At its July 2006 meeting, the task force agreed by consensus to have the co-chairs appoint task force members to serve on the subcommittee during the 2006 interim. Members included:

Representative Rick Miera, Co-Chair
Senator Cynthia Nava, Co-Chair
Senator Vernon D. Asbill
Robbie Heyman, Esq.
Dr. Anna Lamberson
Representative Larry A. Larrañaga
Senator Carroll H. Leavell
Don Moya
Bud Mulcock
Senator Leonard Tsosie

The legislative council service (LCS) provided staff support with assistance as needed from the public school facilities authority, the legislative finance committee, the legislative education study committee and the public education department (PED).

The subcommittee held three meetings from September through December. At the first meeting, subcommittee members were provided with information on the history of capital outlay funding for charter schools in New Mexico. They were told that, when the 1999 legislature considered the measure, representatives from charter schools had insisted that, in their opinion, capital outlay funding would not be an issue because, in the spirit of entrepreneurship, charter school operators would find creative ways to deal with their respective facilities needs.

The subcommittee heard additional testimony that, within two years, existing charter schools had identified a lack of funding for facilities (besides their operational funding) as the most critical issue they were facing. During the 2002 interim and during each legislative interim since then, at least one study group, work group, advisory group or subcommittee has wrestled with charter school capital outlay funding issues. The subcommittee was told that the primary concern has been finding a way to fund facilities for charter schools that does not compromise the integrity of the *Zuni* remedies enacted in previous years.

The subcommittee was also provided with a summary of the provisions of SB 600, including areas of the Charter Schools Act that were modified, in particular the change from a single chartering authority (local districts) to a dual chartering authority (both local school districts and the PED).

The subcommittee also heard testimony from school superintendents about issues that districts are facing regarding charter school facility funding and the requirement that all charter schools be in public buildings by 2010. Charter school operators and representatives from the New Mexico coalition of charter schools testified about the importance of continuing to provide charter schools with funding for lease payments and requested that the program be extended to 2015. Noting that, currently, only three charter schools receive sufficient funding from the lease reimbursement program to cover the actual cost of their leases, they also requested that the amount of the funding be increased from the current \$600 per student.

Antonio Ortiz, PED capital outlay bureau general manager, provided the subcommittee with several funding options for consideration, including the following:

- distribute Public School Capital Improvements Act (SB 9) dollars to charter schools on the basis of program units that their students generate;
- distribute local general obligation bonds to charter schools on the basis of program units;
- make charter school capital outlay a part of the statewide general obligation bonds every two years;
- increase the SB 9 dollars by one-half of one mill, with proceeds designated for all charter schools;
- increase the SB 9 dollars by one-half of one mill for distribution on the basis of program units;
- increase the SB 9 dollars by one mill for distribution on the basis of program units; and
- take an offset for capital money from PED-chartered schools.

Members agreed to include in their consideration possible permanent revenue streams for charter school capital outlay needs by either funding them outright or as a guarantee for the issuance of bonds.

At its second meeting on November 7, 2006, the task force considered several discussion drafts of bills to address issues raised by the subcommittee at its September meeting.

After discussion of the bill drafts, the subcommittee requested the LCS to draft additional bills that would accomplish the following:

- remove the offset requirement for appropriations to state-chartered charter schools;
- allow for aggregation of SB 9 funding for state-chartered charter schools;
- provide a revenue stream for charter schools to pay off bonds issued for the local match for their respective school capital outlay projects;
- allow lease payments and the maximum of other statutorily established payments to rise with inflation;
- extend the deadline for charter schools to be in public buildings to 2015;
- allow for an extra mill under SB 9 for charter schools and allow for distribution directly from the county treasurer;
- require districts to consider the needs of charter schools when adopting a resolution for general obligation bonds;
- increase the state guarantee for SB 9 to \$70.00; and
- if Constitutional Amendment #2 is approved by voters, draft enabling legislation to accomplish its implementation.

At its final meeting in December, the subcommittee agreed to recommend the following to the full task force for inclusion in task force-endorsed legislation for 2007:

- require that a portion of the Public School Buildings Act (HB 33) levy be paid by the county treasurer directly to eligible charter schools;
- allow expenditure of up to five percent of HB 33 funds to be expended for project management and oversight;
- exempt direct appropriations made to state-chartered charter schools from offsets required by the Public School Capital Outlay Act;
- allow for the imposition of an additional SB 9 mill to be distributed to all schools in the district, including all charter schools;
- require local boards to include charter school needs identified in the FAD;
- increase the lease payment assistance from \$600 to \$700 and include language to require increases based upon the CPI;
- extend the lease time period to 2015;
- enact enabling legislation for implementation of Constitutional Amendment #2, which allows for certain types of lease-purchase agreements;
- issue revenue bonds to be backed by school district SB 9 and general obligation bond funding; and
- increase the SB 9 guarantee to \$70.00 per mill per unit for FY 2008.

Regarding recommendations for amendments to public school transportation legislation, the task force agreed that PED did not currently have enough data to allow for a valid recommendation and encouraged PED to consider dealing with charter school transportation issues through its rulemaking process, if possible, rather than amendments to statute.

Appendix E

PUBLIC SCHOOL CAPITAL OUTLAY OVERSIGHT TASK FORCE

MEETING AGENDAS and MINUTES OF MEETINGS

**TENTATIVE AGENDA
for the
SIXTH MEETING
of the
PUBLIC SCHOOL CAPITAL OUTLAY OVERSIGHT TASK FORCE**

**May 22, 2006
Room 322, State Capitol
Santa Fe**

Monday, May 22

- 9:00 a.m. **Call to Order**
- 9:05 a.m. **Review of 2005 Task Force Work and Summary of 2006 Legislation**
—Paula Tackett, Director, Legislative Council Service (LCS)
—Sharon Ball, LCS
- 10:00 a.m. **PSCOC/PSFA Annual Report**
—Robert Gorrell, Director, Public School Facilities Authority (PSFA)
—Tim Berry, Deputy Director, PSFA
—Mark Williams, PSFA
- 11:30 a.m. **Status of *Zuni* Lawsuit**
—Frank Weissbarth, Esq., Assistant Attorney General, Office of the Attorney General
- 12:15 p.m. **Proposed Work Plan and Discussion of Creation of Subcommittee(s)**
—Task Force Members and Staff
- 12:45 p.m. **Discussion of Future Agendas**
- 1:00 p.m. **Adjourn**

**MINUTES
of the
SIXTH MEETING
of the
PUBLIC SCHOOL CAPITAL OUTLAY OVERSIGHT TASK FORCE**

**May 22, 2006
State Capitol, Room 322
Santa Fe, NM**

The sixth meeting of the Public School Capital Outlay Oversight Task Force was called to order by Senator Cynthia Nava, co-chair, at 9:20 a.m. in Room 322 at the State Capitol, Santa Fe.

Present

Rep. Rick Miera, Co-Chair
Sen. Cynthia Nava, Co-Chair
Sen. Ben D. Altamirano
Rep. Ray Begaye
Dr. Leslie Carpenter
Sen. Joseph A. Fidel
Pancho Guardiola
Leonard Haskie
Kilino Marquez
Katherine Miller
Tony Monfiletto
Don Moya, Public Education Department (PED) for Veronica Garcia
Bud Mulcock
Rep. Henry Kiki Saavedra
Dr. Moises Venegas
Rep. W.C. "Dub" Williams

Absent

Sen. Vernon D. Asbill
Gary Bland
Cecilia J. Grimes
Robbie Heyman
Rep. Larry A. Larranaga
Sen. Carroll H. Leavell
Rep. Ben Lujan
Elizabeth Marrufo
Norman Suazo

Staff

Paul Aguilar, Legislative Finance Committee (LFC)
Sharon Ball, Legislative Council Service (LCS)
Tim Berry, Public School Facilities Authority (PSFA)
Robert Gorrell, PSFA
Scott Hughes, Department of Finance and Administration (DFA)
Jeremy LaFaver, LCS
Jeannae Leger, LFC
Antonio Ortiz, PED
Dr. Pauline Rindone, Legislative Education Study Committee (LESC)
Paula Tackett, LCS
Doug Williams, LCS

Guests

The guest list is in the meeting file.

Copies of all handouts and written testimony are in the meeting file.

Monday, May 22

Representative Saavedra expressed concerns he had heard from some of his colleagues about the implementation of the standards-based public school capital outlay process, especially on the issue related to the offset for direct appropriations to both charter and other public schools against a school district's Public School Capital Outlay Council (PSCOC) grant awards. He suggested inviting interested legislators to a future meeting that would include a workshop on the standards-based process, particularly as it relates to the way in which the statute addresses concerns raised by the special master in the *Zuni* lawsuit related to special appropriations.

Review of 2005 Task Force Work and Summary of 2006 Legislation

Paula Tackett briefly reviewed key areas that the task force addressed during the 2005 interim, including the following:

- the statewide assessment of school facilities;
- status of the deficiencies corrections program, including the roof deficiencies and the new two-year roof repair and replacement initiative;
- annual PSCOC awards, including awards for the lease payment assistance program;
- updating of adequacy standards as directed by HB 511 from the 2005 legislative session;
- a number of issues related to charter schools;
- high growth areas and school districts;
- issues related to rural and very small schools;
- alternative capital financing options, including tax increment financing and industrial revenue bonds (IRBs); and
- opportunities for energy-efficient school buildings.

Ms. Tackett then reminded members about their recommendations to the 2006 legislature and said that the recommendations had been included in two separate bills endorsed by the task force. She explained that one bill, the "omnibus" capital outlay bill, addressed a number of issues raised during the task force's first year of oversight of the standards-based capital outlay program and the second year of implementation of the standards-based program. In recapping the following measures proposed by the task force, she indicated that she would note any areas that were changed. The measures include:

1. a requirement that all school districts must have in place a five-year facilities master plan that includes any charter schools in the school district before the PSFA can

approve any school construction — whether or not the district is applying for PSCOC funds;

2. establishment of a new construction local share advance program to allow immediate cash flow for qualified high-priority projects; i.e., projects in high-growth areas. Ms. Tackett explained that the legislation, as it was enacted, allows for the local share, plus any required offsets, to be advanced through the local share advance program and requires that the advance be recouped through a reduction in the state share for subsequently approved projects rather than holding back a school district's Public School Capital Improvements Act (SB 9) state distribution, as had been proposed by the task force. Ms. Tackett noted that the governor vetoed language allowing for advance funding of high priority projects — those at 100 percent or above of the New Mexico Condition Index (NMCI), thus limiting the qualified high-priority projects to high-growth projects only. In response to questions from task force members, Ms. Tackett explained that the program was changed from a "loan" program to a "cash advance" program to clarify that this was not debt within the constitutional restrictions. She also explained that the advance program only kicked in if there was an appropriation for the specific purpose and that no advance may be made out of the Public School Capital Outlay Fund from the existing standards-based funding stream. A separate \$90 million was appropriated for this program.
3. authorization for the PSCOC to use public school capital outlay funds to finance, either partially or fully, a school district's facilities master plan under specific conditions;
4. creation of a "new school development fund" to be administered by the PED with an initial appropriation of \$1.0 million. She noted, however, that the task force recommended appropriation was not included in the final version of the bill;
5. authorization for the PSFA to be its own purchasing agent in the same way that school districts are their own purchasing agents;
6. remaining competitive with the private sector and retaining top quality employees at PSFA, by continuing the status of PSFA employees as exempt rather than classified;
7. authorization to use public school capital outlay funds to pay for demolition of certain buildings with cost savings recouped from the school district's insurance premiums to be used to repay the fund;
8. authorization for the task force to study the impact of certain local government actions on school district revenues. Ms. Tackett noted that the governor had vetoed both the language authorizing the study and its funding;

9. elimination of statutory restrictions on school district end-of-the-year operational balances to provide, for example, more school district funding for a local match for a PSCOC grant or for a district facilities master plan. Ms. Tackett explained that, during the session, the bill was amended to track with the LESC's measure to incrementally increase the amount of cash balances that school districts may retain, adding a provision to allow the secretary of public education to grant a waiver of the equalization reduction if the cash balance will be used as the local share match or to recoup a match advance;
10. increasing the SB 9 state guarantee from a minimum of \$60 per mill per unit to a minimum of \$90 per mill per unit for FY 07, maintaining the language that requires a yearly adjustment to the state guarantee based on yearly consumer price index (cpi) increase. Ms. Tackett noted that the governor vetoed the increase, leaving the SB 9 amount at \$60 per mill per unit with the cpi adjustment;
11. a general fund appropriation of \$2.5 million to continue the development and implementation of a facility information management system (FIMS). Ms. Tackett said that the legislature ultimately provided the funding from the public school capital outlay fund rather than the general fund;
12. authorization to increase lease payment assistance (which applies to both charter schools and local school districts) from a maximum of \$4.0 million to \$7.5 million; and
13. a recommendation and funding for the task force to study the feasibility of creating alternative chartering authorities for charter schools. Ms. Tackett explained that a separate bill that passed and was signed into law (SB 600) did address the issue by allowing the PED to become a chartering authority as of July 1, 2007. She explained, however, that the bill, as it was signed into law, does not address issues related to charter school capital outlay needs. In response to a task force question, Ms. Tackett explained that SB 600 requires the task force to examine the issue of capital funding for charter schools during the 2006 interim and report its recommendations to the legislature and governor by November 1, 2006.

In response to a task force question about appropriations made to a county or municipality for public school projects, Ms. Tackett said that, since 2005, those appropriations have been offset in the same manner as they would be if the appropriation had been made directly to PED.

Senator Nava observed that the local share advance program does not provide assistance to school districts that are able to finance their local share. Ms. Tackett responded that, as a result of establishment of the local share advance program, additional funding has become available for the PSCOC to use in financing projects in other applicant school districts.

PSCOC/PSFA Annual Report

Robert Gorrell, PSFA director, directed task force members' attention to copies of the PSCOC/PSFA 2005 Annual Report. Mr. Gorrell and Tim Berry, PSFA deputy director, said that capital outlay awards for the 2005-06 cycle totaled more than \$232.0 million, the largest amount ever funded by the state for school district capital outlay projects. They also said that the PSCOC had provided an additional \$42.9 million in state funding for correction of deficiencies, roof repairs and facilities leasing assistance. Mr. Gorrell told the task force that the New Mexico facilities condition index (NMFCI) improved from 40.06 percent in 2002-03 to 36.95 percent in 2005-06.

Mr. Gorrell and Mr. Berry also noted the following PSCOC and PSFA milestones in 2005:

- establishment of a user-friendly, web-based PSCOC standards-based award application to reduce complexity of the application process and improve completion times for school districts;
- launching of the Facility Information Management System (FIMS) for use by school districts at no cost with 51 school districts using the system as of May 2006;
- review and approval of 586 submittals for school construction projects at program statement, schematic, design development and bid document phases; and
- training of a total of 773 users from 54 school districts, four state agencies, 63 general contractors and 46 architectural and engineering firms in the construction information management system (CIMS), BidNet, PSCOC awards application, adequacy standards worksheet and the facilities assessment database; and provision of project and funding assistance to 179 construction and facilities projects throughout the state, including new school buildings, new classrooms, life/safety system improvements, emergency repairs to school buildings and financial assistance to lease adequate facilities for charter and other public schools.

Mr. Berry also pointed out that PSFA administrative expenses amount to 2.3 percent of total funding available to the PSCOC. He said that PSFA had received two New Mexico Cumbre Awards for effective government communications and, as well, had been awarded the Piñon Recognition Award for establishing best practices and high-quality management systems.

Mr. Gorrell noted that the biggest challenges facing PSFA are adequately funding maintenance as well as making it easier to monitor. FIMS is helping the PSFA and has helped the districts create a timeline to be set for a variety of maintenance updates that often go overlooked. PSFA is also working to establish better roofs for schools. In response to task force questions, Mr. Gorrell stated that PSFA's focus on heating, ventilating and cooling (HVAC) systems encourages individual classroom control. He added that PSFA is also encouraging architectural designs that provide plentiful natural lighting.

Senator Altamirano asked if it was commonplace for low bidders to have more change orders for construction projects. Mr. Gorrell said that this can be expected in some instances.

He also said that the state is not picking up the entire cost of change orders since a school district is responsible for the local portion of them.

Mr. Mulcock encouraged the PSFA to disaggregate the grant award numbers in its annual report. Mr. Berry noted that the expanded PSFA reference document includes disaggregated individual school and school district details.

In response to a question from Representative Begaye regarding additional costs to build in rural areas, Mr. Gorrell said that, while construction costs in isolated, rural areas are generally greater than in areas with larger populations, subcontractor bonding, competition for construction resources, cost of materials and other factors have significantly increased costs in all areas. Representative Begaye asked that the task force look at issues related to the local match required for PSCOC grants.

Dr. Leslie Carpenter said that PSFA has helped Santa Fe Public Schools (SFPS) with its roof deficiencies, but that the local match — which for SFPS is 90 percent — does create problems for any potential PSCOC grant awards to the school districts. Mr. Mulcock inquired whether deficiency corrections require a local match. In response to a question from Mr. Mulock, Mr. Gorrell explained that deficiencies corrections funding did not require a district match.

Status of Zuni Lawsuit

Frank Weissbarth, assistant attorney general, provided an overview and update on the Zuni lawsuit. He noted that, other than the special master's report concerning the disequalizing effect of direct appropriations, the court has not created benchmarks for bringing the capital outlay process into compliance with the constitution.

He said that Judge Joseph Rich held a status conference on March 20, 2006 during which the plaintiffs outlined their concerns with the standards-based process. At the conclusion of the status conference, the court ordered an evidentiary hearing. Mr. Weissbarth said that he believes that the evidentiary hearing will result in clearer guidelines as to what the state needs to do in order to meet constitutional requirements as they relate to funding public school capital outlay.

Representative Begaye asked about the constitutionality of the new local share advance program. Mr. Weissbarth indicated that he believed that the program is reasonable, that it does not detract from other standards-based capital projects and that the focus on providing adequate space in growth school districts can be just as important as life and safety issues.

Proposed Work Plan

Ms. Tackett reviewed the proposed work plan for the task force's consideration. Also, Ms. Tackett presented the proposed meeting schedule.

Task Force Discussion of Future Agenda Items

Task force members discussed a number of possible issues for examination during the 2006 interim, including modifications to the statewide adequacy standards, taking into account the "small learning communities" concept. Senator Nava suggested that "career pathways" be added to the programmatic issues that affect the adequacy standards. Task force members also suggested consideration of the costs and additional funding necessary for modification to school facilities' design. Senator Nava also asked that the task force consider requirements for "parental involvement" facilities in the adequacy standards. She indicated that, in general, high school adequacy standards need further examination given modifications currently under consideration both in New Mexico and nationally. Mr. Marquez reminded task force members that they had previously agreed to examine inclusion of high school auditoriums in the adequacy standards and suggested consideration of inclusion of other facilities that could be used jointly by schools and their communities.

In terms of constraints on implementation of the capital outlay process, task force members suggested discussion of several issues, including the adequacy of revenues, bonding requirements for subcontractors, availability of an adequately trained workforce and thresholds for project approval. Mr. Guardiola asked about the "in-state preference" for evaluation of bids. He was particularly interested in the fact that out-of-state contractors must present a bid that is 5.0 percent below bids of in-state contractors in order to be competitive. Mr. Gorrell confirmed that state law does provide a 5.0 percent in-state bidder advantage that requires out-of-state contractors to bid 5.0 percent or more below in-state contractors. He noted that Department of Transportation bids are exempt from this requirement.

Dr. Venegas suggested that charter school capital outlay and the proliferation of charter schools should be added to the work plan list of topics. He suggested that the task force might wish to compare student performance between traditional public schools and charter schools. Mr. Moya stated that PED has now created a student identification system and database that will allow for tracking student performance on a student-by-student basis.

Mr. Moya noted that legislation passed by the 2006 legislature (Laws 2006, Chapter 94) provides that charter schools may remain part of the public school district or move under the jurisdiction of the PED. He pointed out that the legislation also requires the task force, together with the PSCOC, PED and PSFA, to examine charter school statutes related to charter school capital outlay funding, transportation costs and any other capital outlay issues related to charter schools. He added that the legislation requires the task force to make recommendations for statutory changes for consideration by the 2007 legislature. Representative Miera noted that the principal issue with charter schools' coming under the jurisdiction of PED is the absence of a tax base for financing the local share of capital projects.

Task force members also agreed to include consideration of student forecasting methodologies during the 2006 interim. Mr. Marquez asked about fees that Albuquerque has agreed to impose on new home construction. Dr. Venegas asked about the effect of those builder

fees on PSCOC grants. Representative Begaye raised an issue of the financial impact on school districts on federally subsidized low-income housing.

On a motion by Representative Miera and a second by Bud Mulcock, the task force adopted the meeting schedule and amended work plan.

The task force adjourned at 11:45 a.m.

Revised: July 19, 2006

**TENTATIVE AGENDA
for the
SEVENTH MEETING
of the
PUBLIC SCHOOL CAPITAL OUTLAY OVERSIGHT TASK FORCE**

**July 20-21, 2006
Pete McDavid Lounge, University of New Mexico
Albuquerque**

Thursday, July 20

- 10:00 a.m. **Call to Order**
- 10:05 a.m. **A Bird's-Eye View of the Public School Capital Outlay Annual Standards-Based Awards Process**
Pre-Award Process
Award Process
Post-Award Process
Ongoing Review and Monitoring
Public School Facilities Authority (PSFA) Staff
—Robert Gorrell, Director
—Tim Berry, Deputy Director
—Pat McMurray, Senior Facilities Manager
—Bill Sprick, Master Planning Manager
—John Manzanares, Facilities Data Manager
—Bob Bittner, Maintenance Coordinator
- 11:30 a.m. **Lunch**
- 1:00 p.m. **Cooperation Among School Districts, Counties and Municipalities**
Joint Use of Facilities
Local Government Decisions About Zoning, Issuance of Industrial Revenue Bonds and Other Tax Issues
—Robbie Heyman, Bond Counsel, Sutin, Thayer & Browne
—Bill Fulginiti, Executive Director, New Mexico Municipal League
—Daymon Ely, Attorney at Law, Law Office of Daymon Ely
—Don Moya, Deputy Secretary, Public Education Department (PED)
—Thaddius Lucero, Manager, Bernalillo County
- 3:00 p.m. **Statewide Adequacy Standards: Process for Modifications and Additions**
—Martica Santistevan, Planning and Design Manager, PSFA
—Andre Larroque, Building Standards Specialist, PSFA
—Paula Tackett, Director, Legislative Council Service (LCS)
- 4:00 p.m. **Recess**

Friday, July 21

9:00 a.m. **Call to Order**

9:05 a.m. **Funding to Meet Adequacy: How to Achieve Balance Between Local Control
& Educational Progress and Cost Effectiveness & Economies of Scale**
—Staff Briefing and Task Force Discussion

10:15 a.m. **Implications of Senate Bill 600 for PSCOOTF**
—Don Duran, Ed.D., Assistant Secretary, Charter Schools Division, PED
—Lisa Grover, Ph.D., Executive Director, New Mexico Coalition of Charter
Schools

11:45 a.m. **Task Force Discussion of Future Issues**
—Robert Gorrell, PSFA
—Paula Tackett, LCS
—Sharon Ball, LCS

12:45 p.m. **Appointment of Subcommittee(s)**
—Task Force Co-Chairs

1:00 p.m. **Adjourn**

**MINUTES
for the
SEVENTH MEETING
of the
PUBLIC SCHOOL CAPITAL OUTLAY OVERSIGHT TASK FORCE**

**July 20-21, 2006
Pete McDavid Lounge, University of New Mexico
Albuquerque**

The seventh meeting of the Public School Capital Outlay Oversight Task Force (PSCOOTF) was called to order by Representative Rick Miera, co-chair, at 10:15 a.m. in the Pete McDavid Lounge, the University of New Mexico, Albuquerque.

Present

Rep. Rick Miera, Co-Chair
Sen. Cynthia Nava, Co-Chair
Sen. Vernon D. Asbill
Sen. Joseph A. Fidel
Cecilia J. Grimes
Pancho Guardiola
Robbie Heyman
Kilino Marquez
Bud Mulcock
Rep. Henry Kiki Saavedra
Sen. Leonard Tsosie
Dr. Moises Venegas
Rep. W.C. "Dub" Williams
Scott Hughes, Department of Finance and
Administration (DFA), for Katherine
B. Miller
Antonio Ortiz, Public Education Department
(PED), for Veronica Garcia

Absent

Sen. Ben D. Altamirano
Gary Bland
Dr. Leslie Carpenter
Sen. Joseph A. Fidel
Leonard Haskie
Rep. Larry A. Larrañaga
Sen. Carroll H. Leavell
Speaker of the House Ben
Lujan
Elizabeth Marrufo
Norman Sauzo**Staff**
Paul Aguilar, Legislative
Finance Committee (LFC)
Sharon Ball, Legislative
Council Service (LCS)
Tim Berry, Public School
Facilities Authority (PSFA)
Robert Gorrell, PSFA
Jeremy LaFaver, LCS
Antonio Ortiz, PED
Dr. Pauline Rindone,
Legislative Education Study
Committee (LESC)
Paula Tackett, LCS
Doug Williams, LCS

Thursday, July 20

**The Public School Capital Outlay Annual Standards-Based Awards Process:
A Bird's-Eye View**

Mr. Gorrell highlighted the three pillars that support the standards-based capital outlay process:

- *adequacy* - establishment of a minimum acceptable level for the physical condition and capacity of buildings, the educational suitability of facilities and the need for technological infrastructure;
- *uniformity* - statewide application of adequacy standards applied statewide; i.e., every school district may apply for funds; and
- *fairness* - utilization of the New Mexico Condition Index (NMCI) database to help prioritize facilities' needs throughout the state.

Citing the Public School Capital Outlay Act (Chapter 22, Article 24 NMSA 1978), Mr. Berry discussed the purpose of the Public School Capital Outlay Council (PSCOC) and described the council's statutorily determined membership, which currently includes Catherine Smith, chair, Public Education Commission (PEC) designee; Dr. Kurt Steinhaus, vice chair, governor's designee; Lisa Martinez, director, Construction Industries Division, Regulation and Licensing Department; Katherine B. Miller, secretary of finance and administration; Don Moya, deputy secretary of public education, secretary of public education's designee; Vicki Smith, president, New Mexico School Boards Association; Paula Tackett, LCS director; David Abbey, LFC director; and Dr. Pauline Rindone, LESC director.

Mr. Gorrell explained that, in addition to serving as staff to the task force and the PSCOC, the PSFA assists districts in developing and implementing their respective five-year facility master plans and preventive maintenance programs, as well as with their respective standards-based grant applications. He also outlined several other PSFA responsibilities, including:

- maintaining the facilities assessment database;
- creating standardized contracts, documents and delivery processes;
- establishing building standards; and
- providing certification and training programs.

Mr. Gorrell added that, from its inception, the precursor to the PSFA (the former Deficiencies Correction Unit of the former State Department of Public Education) has been administering the Deficiencies Correction Program to correct life, safety and health deficiencies in schools. He pointed out that this program is on schedule to be completed by the statutory deadline of June 30, 2007.

With regard to standardizing contracts, Mr. Gorrell noted that, having provided assistance with more than 700 contracts, not a single one of these standardized contracts has been litigated. He also said that PSFA now has three full-time staff members to train school district staff in the various PSFA programs. Specifically, he noted that the "School Dude" software, which assists districts in establishing, implementing and maintaining district preventative maintenance programs, which are required by law, is progressing on schedule. He did, however, express concern about the development and implementation of statutorily required five-year facilities master plans. He explained that currently only 43 districts have their respective plans in place and noted that, by this time, PSFA staff had originally hoped that all 89 districts would have a plan in place.

Pat McMurray, PSFA senior facilities manager, discussed PSFA's work assisting districts in obtaining architectural and engineering services, contract development, project submittal/approvals, construction management and oversight and approval for project closeouts. In response to Representative Saavedra's question regarding the hiring of design professionals, Mr. McMurray stated that each district has the primary responsibility to hire design professionals but that PSFA provides some oversight to ensure that costs do not increase unreasonably (considering market conditions) and that work for design professionals is distributed fairly among those able to provide school district contract work.

In regard to Representative Saavedra's question about the process for review of contract protests, Mr. McMurray explained that PSFA assists the district in reviewing contract protests. He added that, if a satisfactory solution to the protest cannot be reached after PSFA and district review, the protesting contractor has the option of litigation. Mr. Gorrell reiterated that, of the more than 700 contracts with which PSFA has assisted, none has been litigated. Ms. Tackett added that, if districts suspect improprieties or encounter differences that cannot be resolved, many times they will conclude the disputed procurement process and begin a new request for proposals (RFP) process.

Representative Saavedra expressed concerns about the appearance that the same contractors seem to dominate the market in terms of the big contracts. Ms. Tackett explained that provisions in the Procurement Code (such as the New Mexico preference) can be a disadvantage for out-of-state contractors, a situation that can result in the same four or five contractors getting the larger contracts. Mr. Mulcock asked if requirements for contractors to be appropriately bonded to bid on the larger projects can force out the smaller contractors. Mr. Gorrell explained that it does not explicitly force them out, but that only a limited number of contractors have the financial wherewithal to be bonded appropriately to bid on an \$80 million project.

Task force members had a number of questions related to school district master plans. Mr. Gorrell stated that the law requires each district to have an approved master plan before PSFA can approve any contract that the district has proposed for capital improvements. He added that PSFA continues to work with state and local officials to adjust certain antiquated code regulations to help schools save money on unnecessary additions required by some outdated regulations.

Mr. Berry highlighted eligibility requirements for grants awarded under provisions of the Public School Capital Outlay Act, and Mr. Gorrell followed up by explaining the process used to establish and verify NMCI rankings. Mr. Gorrell pointed out that the presentation materials predict a large increase in the number of facility renewals required in 2025. He predicted, however, that because of the implementation of the new facility maintenance programs and procedures, the forecast may not actually play out as predicted.

Mr. Berry discussed some of the 2005 and 2006 legislative changes that affect public school capital outlay, including the following:

- amendments to the statute that governs a school district's issuance of general obligation bonds (Section 22-18-1 NMSA 1978) to allow districts to consider capital needs as shown in the facility assessment database when issuing general obligation bonds and to allow for the use of proceeds from the sale of school district general obligation bonds to provide matching funds for PSCOC-funded projects;
- amendments to the Public School Capital Outlay Act (Chapter 22, Article 24 NMSA 1978) to:
 - require all districts to have a facilities master plan in place that includes all charter schools located within the geographic boundaries of the respective districts;
 - provide financial assistance to qualified districts for development of facilities master plans; and
 - create the new school development fund to assist school districts with one-time costs associated with opening new schools (no funds have been appropriated to the fund as yet); and
- amendments the Public School Finance Act (Chapter 22, Article 8 NMSA 1978) to raise statutory limits on cash balances so districts can use those dollars to fund the required district share of PSCOC grant awards.

Mr. Berry also listed PSFA's key priorities for 2006, including the following:

- speeding up the delivery of school projects by utilizing, where appropriate, project predesign;
- continuing development of standardized facility components, such as standard roof specifications;
- prequalifying bidders of school work based on geographic regions of the state; and
- completing the statewide implementation of the Facilities Information Management System (FIMS), which is currently in use by 46 of the state's 89 districts.

Senator Nava expressed concerns that some of the adequacy standards are too prescriptive, especially in terms of allowed square footage. She said that she is specifically concerned about the loss of school library space as determined by the allowable square footage in the state standards.

In response to a question about the timeliness of state inspections such as those conducted by the fire marshal and Construction Industries Division inspectors, Mr. Gorrell stated that while PSFA uses its regional managers located throughout the state to monitor progress of individual district projects, the ultimate authority is still with the state's official building inspectors. In response to a question from Representative Saavedra regarding project delays caused by an insufficient number of inspectors, Mr. Gorrell stated that PSFA continues to work collaboratively with both the state and local regulatory agencies to help streamline this process.

In response to questions from several task force members regarding school district facilities master plans, Martica Santistevan, PSFA planning and design manager, said that all districts are required to have approved, five-year facilities master plans in place before any funds are expended. She said that developing a facilities master plan requires the district to address

four major areas: (1) identifying the district facility goals; (2) identifying the current adequacy of district facilities and their capacity to meet future needs; (3) analyzing information about future enrollment, program modifications and changes, classroom needs and financial resources and their availability; and (4) identifying the gaps between existing conditions and ideal future conditions, developing a strategy to meet the needs and developing a prioritized list of capital projects required to meet those needs.

She noted that a primary issue with many district master plans is the district's failure to include charter schools. Mr. Gorrell interjected that he thinks that part of this problem may be the result of the fact that many charter schools themselves do not know what their long-term capital needs are. He added, however, that now charter schools must have a facilities master plan in place when they either renew an existing charter or apply for a new one.

Regarding the PSFA goal to speed up the completion of projects, Senator Nava stated that a number of superintendents have approached her with concerns about the increased time and cost to complete projects because of PSFA requirements, which many of the superintendents view as "red tape". Mr. Gorrell said that to address these concerns, PSFA has established several advisory groups to examine issues such as these and make recommendations for improvements. In response to a question about membership on these advisory groups, Mr. McMurray said that PSFA staff requested volunteers to serve on these advisory groups at the 2006 Spring Budget Workshop in Albuquerque. Mr. Gorrell pointed out that state statute currently requires PSFA to review every project. Senator Nava said the main problem is requiring PSFA to review small projects such as moving a portable. She said that this requirement burdens the districts in terms of both time and money. Ms. Tackett said that a change in statute would be necessary for the requirement for changes to be removed. She added that implementing and refining a new process always takes time.

Cooperation Among School Districts, Counties and Municipalities

Introducing the topic, Ms. Tackett noted that the governor line-item vetoed a provision in SB 450 that requires a study of issues related to the cooperation of government entities that was recommended by the PSCOOTF for the 2006 legislature's consideration. She said that the governor's veto message stated that funding a study by a separate group would duplicate the work of the PSCOOTF, which is already established in statute.

Regarding the effect of a county's issuance of industrial revenue bonds (IRBs) on various tax revenues, former Sandoval County Commission Chair Daymon Ely, who negotiated the most recent Sandoval County-Intel IRB issuance, addressed some of the concerns related to the issuance of IRBs in general and the fall 2004 Intel \$16 billion IRB in particular. He explained that IRBs are essentially bonds issued by an authorized local government body for a private business project. He said that the bonds are payable solely from revenue derived from an agreement, usually a lease agreement, between the private business and the government. He emphasized that IRBs are not a general obligation of the local government that authorizes them and are not a financial liability to the government or any pledge of its general credit or taxing powers.

He explained that state statute authorizes IRBs as a way to "level the field" for capital-intensive companies. He said that the ability to issue IRBs allows New Mexico to be competitive with other states for jobs and businesses. Mr. Ely reiterated that issuance of IRBs postpones certain taxes such as gross receipts taxes on the purchase of equipment, property taxes and state income taxes on the interest that investors earn on the bonds. He explained that these tax deferrals allow for an incentive for a company like Intel to locate and remain in New Mexico and bring jobs to the state's economy. He added that current statute provides no guidance on the way in which local government entities may or should allocate any funding they negotiate from the private business for which they are issuing the IRB. He said that, with 30 individual government entities — all of which expected their "cut" of the county's negotiated share — the county commission determined that it would use those funds to provide matching funds for county water projects and a light rail system.

Mr. Heyman, bond counsel at Sutin, Thayer & Browne, informed the task force that the tax relief that Intel received was through state compensating tax from the purchase of equipment. Had Intel purchased its equipment within New Mexico, the tax relief would have been given in the form of gross receipts tax exemptions. He also said that schools have never been included statutorily in IRB discussions. He did point out, however, that language from Laws 2006, Chapter 75 allows tax increment financing money from gross receipts taxes to be used for school projects.

Thaddius Lucero, Bernalillo County manager, told the task force that Bernalillo County and Albuquerque Public Schools (APS) often try to work together to establish joint use facilities, but getting each group to agree on a project can be difficult. Brad Winter, APS assistant superintendent and Albuquerque city councilor, commented that, in his experience, the Albuquerque district has worked well with the county, especially with joint use of facilities. Ms. Tackett raised some questions about the relationship of use of joint-use facilities to the implementation of the provisions of the report of the special master in the *Zuni* lawsuit that the task force may wish to discuss this interim.

In response to questions and concerns from task force members, Bill Fulginiti, executive director, New Mexico Municipal League, noted that the Payments in Lieu of Taxes (PILT) Program is a voluntary and negotiated program. Counties are under no obligation to share PILT revenues with their respective school districts. While addressing the joint-use facilities issue, he said that there was a recent court case that held the city liable for portions of an incident at a pool. He feels that this case could hinder further joint-use facilities discussions, and that changes in the Tort Claims Act could help lessen this liability. Members of the task force asked how liability is assigned in joint-use agreements. Mr. Fulginiti stressed the importance of making clear each entity's liability, or lack thereof, in the negotiated joint powers agreement (JPA).

The task force also discussed the imposition of impact fees on school districts. Some task force members expressed concerns that, while schools are often forced to pay impact fees to local government entities such as municipalities and counties, none of the fees are returned to the district to assist in mitigating the impact of the increased development in their areas and that access to schools should be considered as much a part of an area's infrastructure as is access to

roads, water and sewer. In response to task force members' questions, Ms. Tackett indicated that a statutory change would be required in order for districts to recoup impact fees.

In response to an additional question, Mr. Fulginiti opined that developing a formula for apportioning IRB proceeds may be harmful because such a formula might eliminate money for schools since property taxes do not play a significant role in an IRB. Ms. Tackett explained that, hypothetically, when a company moves into an area, the local school district will see revenue eventually, but it is the immediate impact to the district that is not funded.

Several task force members had questions and concerns about responsibility for repayment of IRBs. Mr. Lucero noted that, in the case of Sandoval County's issuance of IRBs for Intel, Intel itself is responsible for paying back the IRB. In response to a task force member's question, Mr. Lucero said that if the company defaults on its loan, specific stipulations about what the company must pay back to the county are still in place. In Intel's case, he said, that amount would be \$81 million.

Statewide Adequacy Standards: Process for Modifications and Additions

Ms. Santistevan provided the task force with a compilation of suggestions for determining adequacy that PSFA gathered informally from stakeholders during the course of PSFA's work with school districts, architects, engineers and contractors, such as the number and size of playing fields, auditoriums and other types of facilities for performing arts, refinements on standards for science laboratories, requirements for square footage per student and imposition of space utilization minimums. Ms. Santistevan introduced Mr. Andre Larroque, PSFA building and standards specialist, who, she said, would be staffing the PSFA Adequacy Standards Advisory Committee. Mr. Larroque explained that, at the request of the PSCOC, PSFA had put together a group of school district staff, as well as representatives from architects, engineers and contractors and other interested parties, to spend the next several months examining the adequacy standards and making recommendations to the PSCOC for any changes. He noted that the advisory committee's first meeting would be on August 2 in Albuquerque and that the group would be meeting at least throughout the 2006 interim. Ms. Tackett suggested that the task force may wish to examine space utilization percentages for specific facilities to determine what, if any, space needs to be added with each additional program. Representative Miera added he would like the task force to look at facilities needs related to services rather than to "room" needs.

Senator Tsosie asked for additional information about the process that is used to determine adequacy. Ms. Tackett said that a subcommittee of the PSCOC begins the process. She went on to explain that their recommendations then go to the full PSCOC, then to a public hearing and then back to the PSCOC. The first time this process was undertaken, the council held approximately seven meetings to gather input. In response to task force member questions, Mr. Larroque said that PSFA had sought participation from school districts by requesting volunteers at the annual state school budget workshop and through letters of invitation to all districts. He said that potential volunteers were also solicited through various professional organizations. Members of the task force asked staff to provide them with the names of the PSFA Adequacy Standards Advisory Committee. Mr. Marquez asked to have nurses, counselors

and grade- and subject-level teachers included as members of the standards advisory committee.

There being no further business for the day, the task force recessed until 9:00 a.m., Friday, July 21.

Friday, July 21

The meeting was called to order by acting chair, Senator Vernon D. Asbill, at 9:00 a.m.

Funding to Meet Adequacy: How to Achieve Balance Between Local Control and Educational Progress and Cost-Effectiveness and Economies of Scale

Ms. Tackett presented two hypothetical situations regarding public school capital outlay funding in an attempt to set out the problems faced when trying to achieve a balance between local control and cost-effectiveness.

Dr. Steinhaus stated he was appearing before the task force in two capacities: 1) to represent the Governor's Office; and 2) as the chair of the PSCOC Awards Subcommittee. As a member of the awards subcommittee, he feels that a district's ability to be flexible with money, the lack of clarity in state decisions and the balance between cost-effectiveness and community are the main problems with capital outlay funding.

Mr. Gorrell said the PSFA is currently working to build cost-effectiveness into PSFA policies, and he and his staff are working together with local officials to meet their goals and needs as well.

Representative Saavedra questioned the panel about whether the secretary of public education can dictate to a district what the district can do regarding capital improvements. He stated that it is his understanding that the secretary's role is to dictate programs and that local boards make building and consolidation decisions.

Ms. Tackett said that historically this has been the case; however, lately with *Zuni* and other state decisions, the state is creating more requirements.

Task force members requested that a meeting be held between the secretary of public education, district superintendents and task force members.

Willie Brown, PED, clarified that the secretary cannot initiate reorganization of districts. The secretary is responsible only for the final approval of a reorganization.

Mr. Mulcock continued the task force discussion regarding consolidation and asked staff what the research shows when underperforming students move into environments with overperforming students. Dr. Rindone said that there is research showing that the underperforming students' performance increases. However, she said that what happens in most communities is the parents of the overperforming students protest the move.

Several task force members commented that in small communities, the schools and the districts are a matter of community pride, not to mention sometimes the largest employer. Mr. Gorrell said that the PSFA has worked with districts to combine schools successfully. He also stated that several PSFA programs currently protect small districts by sharing a variety of service and personnel costs related to facility maintenance.

Mr. Gorrell and Dr. Steinhaus said many communities are able to raise money beyond adequacy standards, while other communities are not. This has the potential to raise issues of equity.

Charter Schools: Implications of Senate Bill 600 for PSCOOTF

Representative Miera asked about the personnel structure at PED regarding charter schools. Don Duran, PED, said that through appropriations, the PED was given \$500,000 for five additional staff to focus their time on charter school issues. Mr. Moya clarified that the appropriation did not specify how many FTEs were included.

The panel informed the task force that there are currently 62 approved charters in 21 districts. Fifty-one of those are currently open, 10 are going to open in the coming school year and one more will open in a year in Taos.

Staff representing the Coalition for Charter Schools stated that they would like to see charter facilities be in a variety of different buildings while utilizing JPAs and memoranda of understanding. Patricia Mathews, legal counsel for the coalition, said there ought to be a discussion about moving charter schools into public buildings. They also encouraged the task force to provide guidance about whether lease-purchase agreements would be acceptable under current regulations.

Representative Miera raised a question about who will be responsible for the local match for facility improvements for charter schools.

Kizito Wijenje, APS, said that there is currently ambiguity in terms of charters and their capital needs. He said that each charter is a \$5 million to \$9 million liability on the community. At one point, all-day kindergarten reprioritized capital needs for APS by \$100 million. He said that charter schools have the potential to do this to the tune of \$500 million.

Dr. Grover and Ms. Mathews both said they are concerned with the way APS arrived at those figures. They feel that the numbers are true only if each charter school is identical.

Mr. Mulcock asked Dr. Grover and Ms. Mathews if they would support a separate set of adequacy standards for charter schools. Ms. Mathews stated that there is currently some flexibility within statute for charters to work. Ms. Tackett said the PSCOC has the ability to waive certain standards dependent upon program needs.

Representative Miera asked if a charter was contracting its physical education facility needs to a local gymnasium and the local gym closed, would it not be the district's responsibility

to provide a physical education facility for the charter school? Mr. Gorrell said that he does not think it would put the burden on the district, but that it would place the burden on the charter school if the charter school is unable to meet the provisions set in the charter. Ms. Ball said that a charter school would have to change its charter and the district and the PEC would have to approve the new charter. A member of the audience said that if charter schools are forced to go to the PEC, they may lose SB 9 funds along with other funds from a host district.

Dr. Venegas said that he has yet to see an increase in performance from charter school students.

Dr. Grover presented some suggestions for the PSCOOTF:

1. spell out the process on charters moving into district facilities;
 2. strengthen lease reimbursement programs; and
 3. spell out how charters are using IRBs and joint-use agreements and the ways in which charters access charter school facility money from the federal government.
- She expressed concern that New Mexico is not eligible for a portion of a \$33 million nationwide appropriation for charter schools due to weaknesses in the state's charter school laws.

Dr. Grover also raised the issue of providing SB 9 maintenance funds and technology funds for charter schools. She also asked for clarification of the adequacy standards waiver process as it applies to charter schools. Concluding her remarks, Dr. Grover said that the coalition is ready to lend help and resources to the task force.

Ms. Ball reminded the task force that the \$33 million appropriation from the federal government is a nationwide appropriation, and given the amount of money the state has allocated to facility needs, the share New Mexico may or may not get is a drop in the bucket.

Senator Asbill clarified for the task force that charter schools have to be in public facilities, not public school buildings. He then asked of the 51 current charter schools, how many of them are in private facilities? Dr. Grover said that 43 are currently in private facilities and that 8,500 students are being served by the 51 current charter schools.

Representative Miera suggested that the charter schools come together to decide how much flexibility they need. Trying to deal with charter schools on a case-by-case basis will be too overburdensome for the legislature.

Idalee Vogel reminded the task force of the initiative from the governor to place charter schools on tribal lands and would like for the task force to look at this issue.

As the task force continued its discussion of charter school facility needs, Dr. Grover said that she does not feel that APS planned well for charter schools. Mr. Wijenje said that APS looked at each individual program and need for each charter and this is the reason for the range of \$5 million to \$9 million. Mr. Duran asked if there was consideration given to building acquisition or was it to build only? Mr. Wijenje said APS looked at several alternatives such as

the sharing of services, facilities and alternative building types, among others. He said he believes that APS needs to have the ability to move charter schools into empty school facilities. Ms. Mathews said she was disappointed that nobody from charter schools was involved in that committee. Mr. Wijenje responded by saying each charter school was invited to the table and was present in the room when these discussions took place.

Dr. Venegas urged the task force and all stakeholders to try to look toward any future solutions rather than dissecting what has occurred in the past.

Task Force Discussion of Future Issues

Representative Miera requested that the task force meeting scheduled in November be moved to a date in December and that the meeting take place in Santa Fe.

Ms. Tackett said the task force may want to continue to focus on the operation of PSFA and the PSCOC as the state continues with the implementation of the standards-based process. She also said the task force may want to look at the adequacy of the funding for capital needs and issues related to joint-use facilities and local government cooperation.

Mr. Gorrell recommended that the task force discuss the needs for schools regarding various program expansions. He said that the PSFA is, by trade, builders and not educators and requests guidance. He also asked the task force to look at the potential extended use for school facilities along with issues related to noneducational space in the adequacy standards.

Task force members discussed issues related to the inclusion of charter school facilities in bond elections and ways in which the task force may support further examination of this issue.

Ms. Tackett updated the task force on the *Zuni* lawsuit. She said that both parties are getting together in the coming months for an evidentiary hearing. Representative Miera said he believes that SB 600 has *Zuni* implications and would like to review those implications during the interim.

Appointment of Subcommittee

Ms. Tackett directed task force members' attention to Section 59 of SB 600, which requires the task force, in consultation with PSCOC, PED and PSFA, to study all statutory provisions and other issues related to capital outlay funding for charter school facilities and transportation costs and to report to the LESC, the LFC and the governor before the 2007 legislature. She noted that the subcommittee is scheduled to meet in Santa Fe on September 11. The co-chairs announced the following members of the PSCOOTF Charter School Subcommittee:

- Rep. Rick Miera, co-chair
- Sen. Cynthia Nava, co-chair
- Sen. Vernon D. Asbill
- Sen. Carroll H. Leavell
- Sen. Leonard Tsosie
- Rep. Larry A. Larrañaga

- Robbie Heyman
- Anna Lamberson
- Bud Mulcock
- Don Moya

There being no further business, the task force adjourned at 12:00 noon.

Revised: August 3, 2006

**TENTATIVE AGENDA
for the
EIGHTH MEETING
of the
PUBLIC SCHOOL CAPITAL OUTLAY OVERSIGHT TASK FORCE**

**August 7-8, 2006
Pete McDavid Lounge, University of New Mexico
Albuquerque**

Monday, August 7

- 10:00 a.m. **Call to Order**
- 10:05 a.m. **Approval of Minutes, May and July 2006 Meetings**
- 10:10 a.m. **Energy-Efficient School Buildings**
—Andre Larroque, Public School Facilities Authority (PSFA) Building Standards Specialist
—Howard Kaplan, Wilson and Co.
—Bob Leonard, Human Inquiry
—Matt Baca, Director, "Tools for Schools" Program
—Susie Marbury, LEED Administrator, Energy, Minerals and Natural Resources Department
- 11:30 a.m. **Lunch**
- 1:00 p.m. **Developer Construction of School Facilities: Implications for the Standards-Based Process**
—Gilbert Mesa, Vice President, Verde Realty, El Paso, TX
—Jack Darnall, Vice President, Verde Realty, El Paso, TX
—Robert Desiderio, Mesa del Sol
- 2:30 p.m. **Costs of Construction: Update**
—Robert Gorrell, Director, PSFA
—Pat McMurray, PSFA Senior Facilities Manager
—Leslie Carpenter, Ed.D., Superintendent, Santa Fe Public Schools (SFPS)
—Bobbie Gutierrez, Deputy Superintendent/Chief Operating Officer, SFPS
- 3:30 p.m. **Adequacy of Current Long-Term Funding Revenue Streams for Public School Capital Outlay**
—Olivia Padilla-Jackson, Director, State Board of Finance
—Norton Francis, Chief Economist, Legislative Finance Committee
- 4:30 p.m. **Recess**

Tuesday, August 8

9:00 a.m. **Call to Order**

9:05 a.m. **Statewide Implementation of the Facilities Information Management System (FIMS) and District Facilities Master Plans**

—Bob Bittner, PSFA Maintenance Coordinator
—Martica Santistevan, PSFA Planning and Design Manager
—Bill Sprick, PSFA Master Planner
—School District Representatives

11:45 a.m. **Lunch**

1:00 p.m. **Technology Adequacy Standards Update**

—Tom Ryan, Chair, State Council on Technology in Education;
Commissioner, Informational Technology Commission; Executive
Director of Educational Technology, Albuquerque Public Schools
—Dr. Jim Holloway, Assistant Secretary, Rural Education Division, Public
Education Department (PED)
—Karen White, Superintendent, Gallup-McKinley County Schools

2:30 p.m. **Public School Capital Outlay Council (PSCOC) Standards-Based Grant Awards, 2006-07 Cycle**

—Kurt Steinhaus, Chair, PSCOC Awards Subcommittee
—David Abbey, Member, PSCOC Awards Subcommittee

3:00 p.m. **Report on and Review of the Status of Previous PSCOC Awards**

—Tim Berry, Deputy Director, PSFA
—Antonio Ortiz, Director, Capital Outlay Bureau, PED

3:30 p.m. **Adjourn**

**MINUTES
for the
EIGHTH MEETING
of the
PUBLIC SCHOOL CAPITAL OUTLAY OVERSIGHT TASK FORCE**

**August 7-8, 2006
Pete McDavid Lounge, University of New Mexico
Albuquerque**

The eighth meeting of the Public School Capital Outlay Oversight Task Force (PSCOOTF) was called to order by Representative Rick Miera and Senator Cynthia Nava, co-chairs, at 10:15 a.m. in the Pete McDavid Lounge, University of New Mexico campus, Albuquerque.

Present

Rep. Rick Miera, Co-Chair
Sen. Cynthia Nava, Co-Chair
Sen. Vernon D. Asbill
Dr. Leslie Carpenter
Pancho Guardiola
Leonard Haskie
Rep. Larry A. Larrañaga
Sen. Carroll H. Leavell
Elizabeth Marrufo
Bud Mulcock
Rep. Henry Kiki Saavedra
Norman Suazo
Dr. Moises Venegas
Dr. Peter Winograd, Department of Finance
and Administration (DFA) for
Katherine B. Miller
Don Moya, Public Education Department
(PED) for Veronica Garcia

Absent

Sen. Ben D. Altamirano
Gary Bland
Sen. Joseph A. Fidel
Cecilia J. Grimes
Robbie Heyman
Rep. Ben Lujan
Kilino Marquez
Sen. Leonard Tsosie
Rep. W.C. "Dub" Williams

Staff

Paul Aguilar, Legislative Finance Committee (LFC)
Sharon Ball, Legislative Council Service (LCS)
Tim Berry, Public School Facilities Authority (PSFA)
Doris Faust, LCS
Robert Gorrell, PSFA
Jeremy LaFaver, LCS
Antonio Ortiz, PED
Paula Tackett, LCS

Monday, August 7

Energy-Efficient School Buildings

The task force heard presentations from Andre Larroque, PSFA; Howard Kaplan, Wilson and Co., Engineers and Architects; Dr. Bob Leonard, Human Inquiry Research Group; Susie Marbury, Energy, Minerals and Natural Resources Department (EMNRD); and Matt Baca, Tools for Schools, regarding energy-efficient school buildings and the way in which the Public School Capital Outlay Council (PSCOC) adequacy standards currently or potentially meet Leadership in Energy and Environmental Design (LEED™) certification standards. The task force discussion was in response to executive order 2006-001, ordering state agencies to construct new facilities to obtain a rating of "LEED™ Silver".

Mr. Kaplan explained that he was retained by EMNRD to review the PSCOC adequacy standards and found that, for the most part, New Mexico schools would be able to qualify for LEED™ certification by simply using the current PSCOC adequacy standards in place. He noted, however, that schools could not receive LEED™ certification from the U.S. Green Building Council (USGBC) unless the owner of the project (generally the school district) applied and paid for the formal LEED™ certification. Mr. Kaplan noted that his review does not take into account the variable operating costs that come with a LEED™-certified building. Also, renovations to existing facilities were not considered in the report.

The task force discussed the costs associated with LEED™-certified building. Ms. Marbury stated that there are certification fees, registration fees, LEED™ professional fees and commissioning costs that are approximately one-half of one percent of the total project cost. She cited a project in Colorado in which design costs were higher, but she noted that those increases were offset by the decrease in construction costs.

Dr. Leonard was retained by PSFA to review the Baca/Dlo'ay azhi Community School (a U.S. Bureau of Indian Affairs school), the only LEED™-certified school building in the state. Dr. Leonard said that the Baca school has a high user rating and that LEED™ point elements have had some positive effect on the school's environment, occupant health and financial return.

Mr. Suazo noted that LEED™ certification may be difficult in many rural areas. He emphasized that Mr. Kaplan's report did not take into account any renovating or retrofitting of current school building facilities. Only new construction was evaluated.

The task force members also discussed any potential ramifications of hiring a contractor to meet LEED™ certification and then the contractor not meeting that obligation. Ms. Marbury, who is an accredited LEED™ professional, stated that all members of the design and construction team communicate constantly during the entire process and a contractor not meeting LEED™ requirements is rarely an issue.

Ms. Tackett explained that EMNRD established a separate task force, the Public Schools Clean Energy Task Force, to examine issues related to LEED™ certification of school buildings and to report recommendations to the governor. She noted that the governor's executive order applies only to buildings in the executive branch, and that the executive does not have the power to order the schools to build to LEED™ certification because state law grants those powers to local school boards.

Mr. Larroque informed the task force that one of the two new west side Albuquerque schools is considering a LEED™ certification, while the other school is not. Mr. Gorrell explained further that the PSCOC adequacy standards are often similar to LEED™ standards, and that PSFA standards often exceed LEED™ standards, particularly in areas that relate solely to the functions of a school rather than general public buildings, which is what LEED™ certification currently applies to. It was agreed by the presenters that LEED™-certified buildings do not always perform in a manner that saves energy, and, at this time, LEED™-certified schools have not been shown to have an impact on educational performance.

Task force members asked the presenters if a side-by-side comparison of LEED™ standards and the adequacy standards is possible. Mr. Kaplan said it would be difficult to do that since the standards are not phrased the same way. Mr. Guardiola requested that such a comparison be attempted so the task force can see clearly what may or may not be missing from the LEED™ or adequacy standards. Senator Nava echoed the sentiments of Mr. Guardiola and directed PSFA staff to develop such a comparison and report back to the task force.

In a continuation of the energy-efficiency presentation, the task force asked about the enforcement of LEED™ certification and about the benefits from certification. Ms. Marbury informed the task force that LEED™-certified state facilities operate on a self-enforcement basis and that no direct monetary benefits are received via a LEED™ certification, but the benefits are seen on a personal satisfaction and environmental basis. Senator Nava said that it is her understanding that these types of school buildings tend to have less absenteeism, both for students and for teachers.

Matt Baca gave a brief presentation regarding the Tools for Schools training for school district maintenance and operation technicians. A summary of his presentation is in the meeting file.

Approval of Minutes

Acting on a motion by Representative Saavedra and a second by Bud Mulcock, the task force unanimously adopted the minutes of the May meeting of the PSCOOTF.

Developer Construction of School Facilities: Implications for the Standards-Based Process

The task force heard presentations from representatives of the Santa Teresa master development concept in southern New Mexico and representatives from the Mesa del Sol development outside of Albuquerque.

Gilbert Mesa and Jack Darnall, vice presidents of Verde Realty, El Paso, Texas, made a presentation to the task force proposing to front the construction costs of the first elementary school within the development of the master planned community with the understanding that the state and the local school district would purchase the facility at a later date. Specifically, they proposed to construct a new school for approximately 400 students that would meet state adequacy standards and that would cost approximately \$16 million. They would continue to fund the operating expenses of the new school until the school is at two-thirds of its capacity. At that point, the school district would take over the operational expenses and purchase the school from Verde Realty. The purchase price would be the total construction cost minus the district's local match, depending on the district's local match at the time of purchase. Verde Realty estimates that the purchase price would be approximately \$14.3 million if the local match remains at 13 percent.

Addressing the purchase proposal, Ms. Tackett noted that legal constraints associated with the *Zuni* lawsuit may interfere with parts 4a and 4b of the Verde Realty proposal (which is included in the meeting file). She also noted that the only precedent would be the school constructed by Intel in Rio Rancho. She pointed out, however, that Intel did not require the state to purchase the school facility and that the establishment of an agreement for a district to purchase the facility creates potential legal constraints.

Dr. Carpenter asked whether a district can move a facility to the top of its priority list if the facility does not house students yet. She used the example of a charter school coming to a district and asking to be moved ahead of other district priorities even before the charter school opens. She feels this is a similar situation and questioned whether that was fair for the district or for the state.

Mr. Mulcock said that he is concerned about the state providing a guarantee to purchase in parts 4a and 4b of the proposal. It seemed to Mr. Mulcock that the state was entering into a debt without going to the voters, which is illegal. Mr. Mulcock also noted that the task force is simply a sounding board and does not have the authority to accept or reject the proposal itself. To that end, Mr. Mulcock asked if staff would be the point of contact for negotiations. Ms. Tackett said that staff would develop a recommendation on an appropriate point of contact.

Mr. Haskie said that he would like to hear a presentation regarding the legal ramifications of the contingency liability issue related to the purchase agreement.

The representatives from Mesa del Sol gave a presentation to the task force regarding their development outside of Albuquerque. They informed the task force that they are currently in Phase 1 and that a number of businesses are already on board, including the University of New Mexico, which is a 15 percent partner in the project.

Robert Desiderio, representing Mesa del Sol, presented a number of questions for the task force to consider, including whether the new school would be a charter school, and if so,

which entity—the local district or the Public Education Commission (PEC)—will authorize the charter school. Other considerations, he said, include the expediency of the transaction for the new school, created growth versus natural growth and final financing of the project. Mr. Desiderio said that the local school district, if it were the Albuquerque district, would need to come up with 47 percent of the construction costs, with the state covering the rest. Mesa del Sol is willing to donate the land to help defray some costs.

In response to task force members' comments, Mr. Desiderio agreed that the task force will be forced to address issues related to the standards-based process.

In addressing some of the issues raised by Mr. Desiderio, Representative Miera said he is concerned that a situation is being created rather than being responded to. He said that it may be necessary to change the new charter school law as these development scenarios continue to play out.

Costs of Construction: Update

Dr. Leslie Carpenter, superintendent, and Bobbie Gutierrez, associate superintendent, Santa Fe Public Schools (SFPS), presented information to the task force regarding SB 9 (Public School Capital Improvements Act) and HB 33 (Public School Buildings Act) funds. Dr. Carpenter stated that the property values within the Santa Fe district are inflated, which means that the district may never bond to capacity. She noted that, because of Santa Fe's inflated property values, the district is responsible for a 90 percent match on any state funds it receives through the PSCOC.

Dr. Carpenter noted that Albuquerque Public Schools (APS) has for more than 10 years used its HB 33 funds to pay district costs associated with administering its capital outlay program because APS has actually set up the equivalent of a small construction company and, as well, has direct construction oversight of its capital outlay program. Because SFPS is not as large as APS, Dr. Carpenter explained, her board has chosen to contract out the direct administration of capital outlay projects rather than create recurring, full-time-equivalent (FTE) staff positions to accomplish this work as APS has done. She said that the district proposed using HB 33 funds to pay the in-district costs for administering its capital outlay program, but PED has informed the district that HB 33 funds cannot be used to cover these costs. She said that these costs then must be paid with scarce general fund dollars. She explained that SFPS simply wishes to be able to use a small portion of its HB 33 funds to pay for in-house administrative costs for capital outlay. She said that the district is proposing an amount up to five percent of project costs from HB 33 be used to cover salaries directly related to project costs.

In addition to the HB 33 discussion, Dr. Carpenter stated that it is becoming burdensome for districts to get PSFA approval on all projects requiring a permit. Dr. Carpenter associated a cost of \$111,000 to move a portable building with the requirement and asked the task force to consider a modification in the law to allow districts more flexibility in dealing with small capital

projects. Mr. Mulcock said he endorses the idea of a cost threshold for projects needing approval by PSFA. Members of the task force agreed with Mr. Mulcock and decided to look at how to facilitate such a statutory change.

Mr. Gorrell and Mr. McMurray presented some influences affecting construction costs of public school projects, including the following:

- the quality of the materials specified. An increase in the quality of the materials increases costs initially but has the potential to decrease costs in the long term;
- the complexity of the project;
- the quality of the drawings. PSFA is making recommendations on the front end to ensure proper drawings;
- massive addenda issued late;
- subcontractor bond issuance;
- the duration of the project and state penalties;
- weather considerations;
- remoteness of the site;
- site development costs and utility installation costs of portable classroom buildings;
- the general contractor's volume of work and availability to be present on bid day;
- volatility of commodity prices;
- method of project delivery. PSFA is trying to work toward competitive sealed-bid proposals; and
- the five percent negative bid preference that out-of-state contractors must absorb within any New Mexico public project bid. This bid preference for in-state contractors decreases competition and therefore increases costs.

In response to a question from Representative Larrañaga about contract time-line incentives, Mr. Gorrell said that current contracts include no incentives for on-time delivery.

Adequacy of Current Long-Term Funding Revenue Streams for Public School Capital Outlay

Olivia Padilla-Jackson, director, State Board of Finance, and Norton Francis, chief economist, LFC, presented information to the task force regarding current and projected revenues for financing public school facility projects. The revenue streams are currently adequate, and the projections indicate that more money may be available in the future. It was noted that on the day of the meeting, the revenue projections are being adjusted to account for the fact that British Petroleum, because of poor maintenance, must temporarily shut down one of its pipelines in Alaska. Senator Nava and Mr. Francis both noted that the state consistently underestimates annual revenues. Total bonding capacity for FY 2008 will be approximately \$473 million. It was also noted that FY 2008 recurring revenue is expected to be \$612 million above FY 2007 recurring appropriations and that reserves are expected to be above 10 percent, which amounts to more than \$500 million. Senator Nava requested that Mr. Francis provide the task force with specific information on the consensus revenue group's estimating errors.

Tuesday, August 8

Statewide Implementation of the Facilities Information Management System (FIMS) and District Facilities Master Plans

School district representatives and PSFA staff provided information to the task force regarding the current FIMS implementation as well as updates on the development of facilities master plans.

Bill Sprick, PSFA, began the presentation by telling the task force that less than one-half of New Mexico's school districts have a current facilities master plan (FMP) in place. He added that most of the districts without plans are continuing with capital projects despite the lack of an approved plan. PSFA staff also noted that currently the state requires a five-year plan and that most projects take two to three years from conception to completion. Therefore, PSFA is recommending that all districts have a 10-year plan. In addition, it was stated that it is expensive for districts to obtain student forecasting data from the University of New Mexico's Bureau of Business and Economic Research (BBER). As a result, PSFA requests that PED be allowed to compile such data for the districts.

Les Martinez, PSFA, updated the task force on the progress of implementing FIMS. He explained that PSFA has been working with districts in a phase-in process to help districts to increase their levels of proficiency with FIMS.

Some of the benefits that districts are seeing with the implementation of FIMS are:

- more work orders are being identified;
- data are now available for analysis;
- completed work is being documented and recognized;
- employee performance is more readily monitored; and
- utility cost savings are being realized.

Some of the challenges PSFA is seeing in the implementation process are that change is sometimes difficult for districts, that PSFA is perceived at times as "Big Brother" and that a limited number of staff at the district level are available for data entry. Task force members and staff discussed the possibilities of regional educational cooperatives (RECs) assisting with data entry duties. REC 6 is currently implementing a pilot program, and PSFA will monitor its success throughout the next year.

Representatives from school districts told the task force that as time progresses, they are seeing attitude changes among their staffs and that the districts that are maximizing their use of FIMS are overall very happy with FIMS as well as with the support given to them by PSFA.

Dave Flood, operations and transportation director, Alamogordo Public Schools, gave a presentation containing a variety of charts and data analysis tools that his district uses. The data analysis tools have allowed him and his staff to monitor water and energy usage as well as work-

order completion statistics. Mr. Flood said that FIMS is allowing him to focus his energies on supervisory and planning areas and is increasingly allowing his staff to maintain district facilities more efficiently.

The task force briefly discussed possible ramifications of year-round schooling for more efficient use of buildings. The superintendents that were present said that they appreciate having schools vacant during the summer months so that they can complete large facility-maintenance projects that would otherwise be impossible if students were in the facility year-round.

In response to a question, Mr. Moya said that the districts' budgets were reflecting an increase in maintenance salaries, perhaps as a way to achieve the five percent average salary increase as mandated by the legislature. Mr. Flood said his district has equipped maintenance and custodial staff with Nextel radio communication and has seen a positive response from maintenance staff as a result.

Bob Bittner, PSFA, presented issues relating to preventative maintenance plans (PMPs). He noted that the difference between a PMP and an FMP is that a PMP can be done with district and PSFA personnel, whereas a FMP is traditionally done with outside contractors. He explained each one is an integral part of the other, but current law does not require a district to have an approved PMP in place.

Mr. Bittner continued his presentation by highlighting some issues related to SB 450, the 2006 PSCOOTF funding bill. During the last legislative session, \$2.5 million was appropriated to continue FIMS and the equipment inventory. As a result, PSFA has set a goal to finish the facility maintenance database by the end of 2007. He also recommended increases in SB 9 funding for contract support and for use in maintenance salaries.

District representatives said that they are having problems retaining qualified maintenance personnel due to lower-than-average salaries for skilled craftspersons. One of the problem areas highlighted by the districts is retention of HVAC and plumbing personnel. To help combat this problem, Mr. Bittner said that REC's are looking at having regional service contracts.

Mr. Moya said that the REC's took a hit when the PED changed to a reimbursement basis on federal funding. He said that REC's are requesting permanent operational funding since they are a government entity under PED.

The task force discussed several issues regarding the Fair Labor Standards Act (FLSA). Mr. Flood said that the FLSA has been covered at a district law conference and that his district is constantly working and monitoring to ensure its compliance. Mr. Guardiola requested that REC's be allowed to use SB 9 funds to help retain service contractors.

Representative Miera questioned whether a district is required to use FIMS in order to receive a PSCOC grant. Mr. Gorrell stated that it was his understanding that districts have to use it only after receiving a PSCOC grant and that there is currently no statutory requirement for all districts to use it. He further clarified that the entire district must use FIMS after receiving a PSCOC grant, not simply the awarded facility.

Senator Asbill asked if PSFA has the authority to reject a project even if PSCOC money is not being used. Mr. Gorrell stated that PSFA does have that authority, but it tries to simply revise any plans that affect life, safety or welfare, rather than reject the entire project proposal. In addition, Mr. Gorrell stated that PSFA does not want to review every project, just those that affect adequacy and life, safety or welfare. Landscaping changes, for example, should be a district decision, he said.

Technology Adequacy Standards Update

Mr. Tom Ryan, chair, Council on Technology in Education (CTE); commissioner, Information Technology Commission; and executive director, Educational Technology, APS, summarized CTE's work in implementing the provisions of HB 511, passed by the 2005 legislature, which required the CTE to develop and define minimum educational technology standards and then to assess all schools in each district to identify deficiencies from the minimum standards, as well as cost projections to correct the deficiencies.

Mr. Ryan stated that, in order to meet the requirements in HB 511, the PED and CTE researched technology standards and models found in leading New Mexico school districts and other states and then developed minimum adequacy standards for educational technology systems. Then they determined the numbers and capabilities of all school computers through the use of a statewide computer census and integrated technology adequacy standards into the state educational technology plan to assist districts in their planning. Mr. Ryan explained that the PED and CTE then developed a methodology based on the capital outlay standards-based model to identify, prioritize and correct deficiencies. After developing an estimate of the cost to correct the most serious deficiencies, they made some recommendations to leverage funding for educational technology needs of schools. CTE estimates that the cost to meet standards for educational technology infrastructure statewide would be a nonrecurring appropriation of approximately \$94.5 million. The estimated yearly cost to replace outdated equipment on a five-year cycle would be approximately \$24.2 million in recurring costs.

Mr. Ryan emphasized that network and computer deficiencies at district, building and classroom levels prevent adequate access to distance learning, data sharing and digital curriculum. In response to a question, Mr. Ryan stated that the \$24.2 million is 20 percent of the estimated five-year cost for computer and network equipment replacement and that the total over a five-year period would be \$121 million in recurring funding. He added that the CTE is recommending that the technology adequacy standards be included with the construction adequacy standards and be followed in all new construction and remodeling projects. In response to additional questions, Mr. Ryan stated that the PSCOOTF had recommended similar

appropriations for consideration during the 2006 legislature, but that the total funding was amended out of the final SB 450.

Ms. Karen White, Gallup-McKinley County Schools (GMCS) superintendent, introduced Mr. David Oakes, GMCS data systems coordinator, who discussed the district's use of educational technology. He noted that in 1996 most schools in the district, if they had any internet access at all, were using a dial-up connection. At that time, he said, the GMCS central office shared a 56-kb circuit with Gallup High School. He noted that, after passage of federal legislation in 1996, the district began exploring the possibility of E-rate funding, which has turned out to be extremely successful. He said that GMCS has made a tremendous investment in a robust data-telecommunications network for the district and has committed matching funds to secure almost \$67 million over the past 10 years to build and maintain a network that allows schools to be in close communication with one another and with the district office. He noted that district communication is increasingly relying upon email and web pages. He added that, with implementation of the Student Accountability Reporting System (STARS), which replaces the old ADS system, the district will be required to submit 48 reports to PED rather than the previous six. He concluded by crediting the vision of the GMCS board of education and superintendent with the district's ability to communicate internally and with PED.

Dr. Jim Holloway, assistant secretary, PED Rural Education Division, discussed the importance of appropriate equipment for distance learning. He noted that 48 of the state's 89 districts are considered to be rural, isolated districts and that distance learning is becoming increasingly important for these districts as well as for larger urban districts. He emphasized the importance of continuing cooperation between PED and the Higher Education Department so that access to distance learning is not held up by one or more groups.

Mr. Roy Soto, the state's chief information officer, agreed with Dr. Holloway on the importance of taking a coordinated approach among all groups that can benefit from distance education. He reported that he served as the governor's representative on the Qwest settlement that brought \$15 million to the state for education and emphasized the importance of using those funds on a statewide basis.

Representative Miera noted that equalizing educational technology infrastructure is the final part of the *Zuni* special master's requirements. He noted that establishing standards without providing funding to meet those standards would be useless and hopes that the legislature will be able to appropriate sufficient funding to begin to bring all schools up to educational technology adequacy standards. Mr. Soto stressed the importance of using all appropriate funds, such as funding from the Qwest settlement and public-private partnerships, in order to make the overall statewide costs palatable to the legislature.

Representative Miera asked that PED provide the legislature with a comprehensive request for public school capital outlay funding that would include, rather than single out, educational technology.

Public School Capital Outlay Council Standards-Based Grant Awards, 2006-07 Cycle

David Abbey, PSCOC awards committee member, and Kurt Steinhaus, PSCOC awards committee chair, provided a breakdown of PSCOC's current financial status.

Dr. Steinhaus said that for the present awards cycle, the council focused on high growth areas and projects that would not take more than a year to complete. Mr. Abbey added that the council has focused on eliminating facilities that are detrimental to districts and to students. He added that the council is currently focusing on renovations.

The task force discussed the possible influence that the executive may or may not have on the awards process. There was a discussion regarding the governor's direct influence as well as the influence he has through the media and public opinion.

Dr. Steinhaus said the council focused on a number of issues when deciding the grant awards. Whether a district was using FIMS was used as a consideration. Mr. Mulcock questioned whether FIMS is a requirement or just a consideration. He noted that the PSCOC added contingency language for the Tierra Amarilla elementary school project. The language reads, "*...project design funds will be provided as soon as the MOU is signed.... Construction funds will not be provided until the district has demonstrated an increased commitment to preventive maintenance at all existing facilities, to include full use of the already available FIMS software.*". Mr. Mulcock noted further that in a previous presentation, it was stated that FIMS is not a requirement. Mr. Mulcock requested a clarification on whether it is or is not a requirement and for everybody to be on the same page in future awards cycles.

Senator Nava questioned the presenters about the \$40 million request that resulted in a \$1.9 million appropriation for the Gadsden district. Dr. Steinhaus stated that the awards subcommittee did have available the correct current and projected student population information and appropriated enough money to the district to construct a new gymnasium. He stated that once the district provides the council with correct student population figures, it would be eligible for future PSCOC grants.

Senator Nava said it is her understanding that when projects rise to the top of the priority list, they would receive appropriate funding and that current practices do not appear to reflect such priorities. She also raised concerns that the legislature is giving away its appropriating power to staff, who make up the PSCOC. Mr. Abbey said that the council is continuously making progress and is more advanced than it was nine years ago in the ranking process.

Report on and Review of the Status of Previous PSCOC Awards

Antonio Ortiz, PED, and Tim Berry, PSFA, gave a brief presentation on the status of previous capital awards for public schools. More than 98 percent of the funds appropriated during the 1998-1999, 2000-2001 and 2001-2002 awards cycles have been encumbered successfully. More than 92 percent of the funds appropriated during the 2002-2003 cycle have

been encumbered, and 77 percent of the funds appropriated in 2003-2004 have been encumbered.

Mr. Berry presented a spreadsheet that shows the progress of 2004-2005 projects. Of the 60 projects, only four are behind the schedules established by their respective memoranda of understanding, with no funds encumbered. He noted that the majority are on schedule. Mr. Abbey commented that PSFA is ahead of most other state agencies in ensuring capital money is being spent in an efficient and timely manner.

There being no further business, the task force adjourned.

**TENTATIVE AGENDA
for the
NINTH MEETING
of the
PUBLIC SCHOOL CAPITAL OUTLAY OVERSIGHT TASK FORCE**

**October 10-11, 2006
UNM Continuing Education Center, Room G
1634 University Blvd. NE
Albuquerque**

Tuesday, October 10

10:00 a.m. **Call to Order**

10:05 a.m. **Standards-Based System: Issues and Options Regarding Adequacy**
—Robert F. Rosebrough, Esq., Jordan & Rosebrough, PC, Legal Counsel for
Gallup-McKinley County Public Schools (GMCS)
—John Stamford, Assistant Superintendent of Business Services, GMCS
—Ron Van Amberg, Esq., Van Amberg, Rogers, Abeita & Yepa, LLP, Legal
Counsel for Zuni Public Schools
—Bruce Boynton, Esq., Boynton Law Office, Legal Counsel for Grants-Cibola
County Schools

11:45 a.m. **Lunch**

1:30 p.m. **Potential Improvements in Application of Adequacy Standards: A
Discussion on Utilization and Community Needs**
—Martica Santistevan, Planning and Design Manager, Public School Facilities
Authority (PSFA)
—Andre Larroque, Building Standards Specialist, PSFA

3:00 p.m. **Facilities Master Plans: Looking Ahead 10 Years**
—Bill Sprick, Master Planner, PSFA
—Pat McMurray, Senior Facilities Manager, PSFA

3:30 p.m. **Update on Developer Construction of School Facilities: Implications for the
Standards-Based Process**
—Gilbert Mesa, Vice President, Verde Realty, El Paso, TX
—Jack Darnall, Vice President, Verde Realty, El Paso, TX
—Tanya L. Scott, Esq., Law and Resource Planning Associates, LLC,
Albuquerque, NM
—Peter Mallory, Esq., Registered Lobbyist

4:30 p.m. **Recess**

Wednesday, October 11

9:00 a.m. **Call to Order**

9:05 a.m. **Approval of Minutes**

9:10 a.m. **Growth Issues, Adequacy Standards and the Standards-Based Process**
—Westside Neighborhood Coalition of Neighborhood Association Executive Committee
—Joe Valles, DDS, President
—Dan Serrano, Vice President
—Laura Horton, Secretary
—Joan Jones, Treasurer

10:00 a.m. **Adequacy Standards: Issues and Recommendations**
—Walter G. Gibson, Superintendent, Los Lunas Public Schools
—Dr. V. Sue Cleveland, Superintendent, Rio Rancho Public Schools
—Dr. Elizabeth Everitt, Superintendent, Albuquerque Public Schools
—Toni Nolan-Trujillo, Superintendent, Pojoaque Valley Public Schools
—Karen S. White, Superintendent, GMCS
—Dr. Sonia Diaz, Superintendent, Las Cruces Public Schools
—Ron Haugen, Superintendent, Gadsden Independent School District
—Dr. Leslie Carpenter, Superintendent, Santa Fe Public Schools

11:30 a.m. **Lunch**

1:00 p.m. **Proposal to Revise Current PSFA Oversight and Review Responsibilities**
—Martica Santistevan, Planning and Design Manager, PSFA

2:00 p.m. **Cost Savings Realized by Designating Portable Classrooms as Temporary Facilities: Proposal to Construction Industries Division**
—Pat McMurray, Senior Facilities Manager, PSFA

3:00 p.m. **Public School Capital Outlay Council/PSFA: Other Issues and Priorities**
—Paula Tackett, Chair, PSCOC
—Tim Berry, Deputy Director, PSFA

**MINUTES
for the
NINTH MEETING
of the
PUBLIC SCHOOL CAPITAL OUTLAY OVERSIGHT TASK FORCE**

**October 10-11, 2006
UNM Continuing Education Center, Room G
1634 University Blvd. NE
Albuquerque**

The ninth meeting of the Public School Capital Outlay Oversight Task Force (PSCOOTF) was called to order by Senator Cynthia Nava and Representative Rick Miera, co-chairs, at approximately 10:15 a.m. in the University of New Mexico (UNM) Continuing Education Center, Room G, at UNM in Albuquerque.

Present

Rep. Rick Miera, Co-Chair
Sen. Cynthia Nava, Co-Chair
Sen. Ben D. Altamirano
Sen. Vernon D. Asbill
Dr. Leslie Carpenter
Cecilia J. Grimes
Pancho Guardiola
Leonard Haskie
Robbie Heyman
Anna Lamberson
Rep. Larry A. Larrañaga
Sen. Carroll H. Leavell
Kilino Marquez
Elizabeth Marrufo
Don Moya for Veronica Garcia, Public
Education Department (PED)
Bud Mulcock
Rep. Henry Kiki Saavedra
Norman Suazo (October 11)
Sen. Leonard Tsosie
Dr. Moises Venegas
Dr. Peter Winograd (October 10) and
Katherine Bilton (October 11) for Katherine
B. Miller, Department of Finance
and Administration (DFA)
Rep. W.C. "Dub" Williams

Absent

Gary Bland
Sen. Joseph A. Fidel
Speaker of the House Ben Lujan

(Attendance dates are noted for members not present for the entire meeting.)

Staff

David Abbey, Legislative Finance Committee (LFC) (October 10)

Paul Aguilar, LFC

Sharon Ball, Legislative Council Service (LCS)

Tim Berry, Public School Facilities Authority (PSFA)

Pauline Rindone, Legislative Education Study Committee (LESC)

Robert Gorrell, PSFA

Linda Kehoe, LFC

Roxanne Knight, LCS

Antonio Ortiz, PED

Paula Tackett, LCS

Guests:

The guest list is in the meeting file.

Copies of all handouts and written testimony are in the meeting file.

Tuesday, October 10

Standards-Based System: Issues and Options Regarding Adequacy

Robert F. Rosebrough, Esq., Jordan and Rosebrough, PC, legal counsel for Gallup-McKinley County Public Schools (GMCS); John Stamford, assistant superintendent of business services, GMCS; Ron Van Amberg, Esq., Van Amberg, Rogers, Abeita and Yepa, LLP, legal counsel for Zuni Public Schools; and Bruce Boynton, Esq., Boynton Law Office, legal counsel for Grants-Cibola County Schools, were scheduled and appeared before the task force except for Mr. Stamford, who was not present.

The presentation focused on the original *Zuni* lawsuit, which they summarized as a shift in school funding from primarily local to more of a shared state responsibility. Mr. Rosebrough offered a history on the issue of capital school funding. During his presentation, he noted the increase in state funding for capital project deficiencies. Since the lawsuit seven years ago, he stated that capital funding for schools has increased from a \$12.5 million average state award to an award from the legislature in excess of \$180 million. He said that New Mexico is still in the "middle stage" with regard to the *Zuni* lawsuit. He expressed concern about the state's large backlog of school facility funding needs and the increasing costs for construction. His major concern is the adequacy standards "ceiling" for the poorest districts. He proposed raising the adequacy standards and establishing a permanent revenue stream for school facility construction.

Mr. Van Amberg asked that everyone work together with a common goal. He focused concern on several items:

- the number of schools going before the Public School Capital Outlay Council (PSCOC) for funding requests;

- the ranking system;
- the methodology for rankings based on the adequacy standards;
- problems with standards being either too rigid or too flexible;
- local school boards needing more say in the standards process; and
- the need for a system in which the adequacy standards are important to all districts.

The presenters claimed that some schools have more access to bonding dollars, thus causing disparity, which needs to be addressed, particularly for areas like Gallup and Gadsden. There was discussion about finding a way to allow the districts with little or no bonding capacity to go "above" adequacy standards and be able to address rapid growth. They suggested that facility needs are falling behind in the sources and amounts of funding required, thus digging the state into a deeper hole.

Mr. Boynton explained to the task force that the adequacy standards need closer examination and clarification in terms of a school's overall program, and that the standards should be consistent and appropriate for the overall program goals of the schools. Local districts need to have input in order to address their individualized needs.

Representative Larranaga noted that the state needs at least \$2.5 billion to \$4 billion to meet the current minimum adequacy standards for school districts. He stated that local districts can add things at a cost for the locals, which would cover items above the adequacy standards. Mr. Boynton responded with concern that the legislature seems to have funded many capital outlay projects with a greater priority than the school capital outlay projects. He seemed to suggest that there might be a priority for certain kinds of school capital outlay that trumped other capital outlay funding. Mr. Rosebrough noted that adequacy is a constitutional issue as well as a uniformity issue. He commented that education requires uniformity and sufficiency in the constitution, but that other capital outlay does not.

The attorneys clarified that they want schools to be able to go beyond the adequacy standards without a penalty (offset) in order to provide for individualized and local school needs. They do not support "cookie cutter" schools. This topic generated conversation about the Arizona school system, which is not one the attorneys favor for capital spending on schools. They reiterated a desire to work collaboratively with the state of New Mexico to create a fund and find a revenue stream to let some schools deviate from the adequacy standards, particularly for auditoriums, theaters or performing arts centers and sports facilities.

It was noted by Mr. Moya from the PED that one of the purposes of the PSCOC is to adjust the adequacy standards; they are not stagnant. Mr. Boynton suggested that if the adequacy standards are increased, there will be program impacts, and he wondered how the state would be addressing security in schools.

Senator Altamirano offered his explanation about the overall capital outlay process and underscored the fact that there always is some criticism as to whether the funding should be for schools or something else.

Mr. Haskie noted that major litigation, such as in land and water cases, have run for years, so he seeks an early resolution to the school funding issues. He recommended that the parties lay out clear parameters for what they want, and he urged the schools to come out with a consummated agreement to take to the legislature.

In response to several of Mr. Mulcock's questions, the attorneys suggested that the task force look at the process and how aggressive it is. Mr. Mulcock stated that he thinks the 1,500 percent increase in funding for schools has been very aggressive. He wanted to know how much time is acceptable for bringing schools to adequacy and proposed that the state's solution "back into" the time frame.

Co-chair Miera commented that the PSCOOTF is looking at adequacy standards, but that technology always has been a big issue — over \$100 million of need. He clarified that issues with funding for natural disasters have a significant impact on funding for other projects. He expressed concern about charter schools and how they will be changing in the future. He mentioned that the "use" of schools needs to be reviewed, along with the partial year closure of schools, which takes place in most districts. Mr. Boynton said that a lot of the capital outlay funding went to charter schools.

Senator Leavell asked what the attorneys would have done versus what has been done by the state. Mr. Boynton's response reasserted the problem with the adequacy standards, questioning what is the best way to address them since some schools, like Zuni, are limited, whereas for other schools the adequacy standards are the bottom of what the schools can afford to build.

Mr. Guardiola said that even though he comes from an area that is 75 percent Native American, he feels the system is equitable. Others said they want the litigation to go away and that the attorneys have not presented solutions, other than to increase local bonding capacity or other funding streams. While Mr. Van Amberg said he did not bring any solutions to the meeting, he thinks that the finance and budget people should get together to develop ideas. Mr. Boynton cautioned that in Arizona, the court mandated a solution that New Mexico would not want imposed here.

Co-chair Nava expressed concern that the wealthier districts have an advantage and other secondary schools have issues with the adequacy standards. She supports the establishment of a subcommittee, and names were given to staff.

The task force recessed for lunch and reconvened at 1:50 p.m.

Potential Improvements in the Application of Adequacy Standards: A Discussion on Utilization and Community Needs

Martica Santistevan, planning and design manager with the PSFA, and Andre Larroque, building standards specialist from PSFA, gave brief presentations. First, Ms. Santistevan gave a history of the adequacy standards, noting the 2001 first draft of the standards, and directed interested persons to the PSFA Planning Reference Guide on the PSFA's web site.

Mr. Larroque reviewed his handout, which contains a recap of the August 5, 2006 and the September 15, 2006 meetings of the Adequacy Standards Advisory Group. This group has been meeting to review all of the adequacy standards for the purpose of updating, revising and correcting them. School district representation has been good, and the group has made considerable progress on the proposed changes.

A few of the major concerns include that:

1. the scope of and purpose for the adequacy standards needs a better definition;
2. the standards should make reference to the PSFA Planning Reference Guide;
3. the PED may need to update and clarify programmatic guidance in areas that impact facilities;
4. several new definitions need to be added to the standards;
5. statutory changes relating to rural education and educational technology may require changes in the standards;
6. some flexibility may be included in the classification of schools and new categories may need to be added;
7. minimum requirements for site security must be analyzed in consideration of any applicable state and federal policies regarding schools;
8. some revisions to the food services section may be required due to state requirements regarding length of lunch periods and practical experience regarding space needs; and
9. additional language cleanup may be necessary.

Facilities Master Plans: Looking Ahead 10 Years

Bill Sprick, master planner, and Pat McMurray, senior facilities manager, both from PSFA, gave presentations on the future of facility master planning. The two presenters reviewed the results of a state poll they conducted to determine if other states have five- or 10-year school facility planning requirements. The results of 30 states indicated that the states were equally divided among those with a five-year, 10-year or no requirement for long-term planning.

Mr. McMurray noted that master plans often are subject to change whenever there are changes in school district staff, managers or boards, which can lead to repeated change and failure to commit to a long-term strategy. Mr. Gorrell gave some examples of changes caused by the staff changes in the districts. Also, Dr. Carpenter, superintendent for the Santa Fe School District, noted that programmatic changes may impact facility needs. Mr. McMurray said some school districts are "piecing" facilities to appeal to the voters in bond elections versus putting all the proceeds into one or a few schools within the districts.

Mr. Sprick noted that the planning process is helpful in bringing the facility assessment database together with the master planning efforts. Master planning can incorporate factors such as growth and housing developments. Mr. Gorrell explained that the PSFA monitors plans to be sure the PSCOC is not funding unnecessary space (e.g., a proliferation of unnecessary space). Recent legislation was passed for the standards-based process to allow for assistance to school districts for facility master planning. Training has been offered by PSFA to school districts to help them. Ms. Tackett reminded the task force that under the old law it was the superintendent of public instruction who needed to review the space issues; now it is the PSFA performing that role.

Facility master planning is implemented using capital funds, while the maintenance plan identifies when facility equipment is nearing the end of its projected useful life, requiring replacement. The budget needs to be identified throughout the master plan for the equipment replacements. It is important that the master plan and budget needs are aligned for budgetary and funding purposes.

There was discussion among task force members regarding the value of long-term plans and their accuracy, and the need for 10-year plans for smaller, slow-growth school districts. Others think the longer-term plans are costly, given their value and accuracy. Many factors in construction costs can change quickly and seriously impact the value of the plans. Some concern was raised about trying to have "one size fits all" approaches to planning and construction. Also, there were cautions offered about allowing facility plans to dictate program plans. The concept of moving to 10-year plans was received by the task force with limited enthusiasm.

Update on Developer Construction of School Facilities: Implications for the Standards-Based Process

Gilbert Mesa, vice president, Verde Realty, El Paso, Texas, Jack Darnall, vice president, Verde Realty, Tanya L. Scott, Esq., Law and Resource Planning Associates, LLC, Albuquerque, and Peter Mallory, Esq., registered lobbyist, appeared before the task force to discuss their proposal to use private sector funds to build a school facility under a lease-purchase agreement with the state or the school district in Santa Teresa. Specifically, this proposal is meant to encourage private capital investment in the construction of schools and allow a school district to apply or qualify for and use public school capital outlay matching funds to purchase a school building that has been constructed and occupied by the school district but that is not already owned by the school district.

There was discussion about the impact this might have on the "local share" and whether a school's need would have to be confirmed through the regular process. It was recommended that a work group be established to study the proposed language and to report back to the PSCOOTF.

The task force recessed until the next day.

Wednesday, October 11

The meeting was reconvened at approximately 9:30 a.m.

Growth Issues, Adequacy Standards and the Standards-Based Process

The Executive Committee of the West Side Coalition of the Neighborhood Associations appeared before the task force. Joe Valles, DDS, president, Dan Serrano, vice president, and Laura Horton, secretary, were present. Ms. Joan Jones, treasurer, was not present for the meeting.

The first speaker was Mr. Valles, who presented the contents of his handout (see meeting file). The west side coalition represents more than 30 neighborhood associations from three different city council districts in Albuquerque, and it has stood firmly in pursuit of adequate funding for the west side schools and schools in other high-growth areas throughout the state. He said the taxpayers in this high-growth area are desperate and frustrated and that they have passed school bonds to get two new high schools built, but they see the need for a third high school as soon as the two other schools are completed.

Mr. Serrano reported that 65 percent of the building permits in Albuquerque are for west side growth. He expressed concern that the upcoming bond election would only provide funding to get the school district to where it should have been five to six years ago. He expressed concern that the *Zuni* lawsuit has negatively impacted the high-growth areas, and he urged the task force to continue exploring alternative funding sources to address the unique needs of high-growth areas. Included in those alternatives are severance tax bonds and design-lease build options.

It was noted that Albuquerque's east side continues to suffer from infrastructure deficiencies while the west side struggles with high growth. The presenters urged the task force to include within the funding formula and strategies a distinction between growth within the school district versus growth patterns distinct to the west side. They urged the task force to explore redistricting to get representation more balanced for the west side, to consider that the Albuquerque metro area is the most taxed area in the state and that the Albuquerque Public School (APS) District is the twenty-fifth largest in the country, with a student population of 89,500 housed in 131 schools.

Ms. Horton said APS will be opening up 500,000 square feet of new schools, but she is concerned that there will not be sufficient funding to maintain these schools.

Mr. Serrano asked that a future study be done to look at true property assessments and other issues related to funding sources. When asked by the task force if the west side is working with the City of Albuquerque, Ms. Horton said they do what they can. She mentioned that the impact fees (e.g., in the Ventana Ranch area) are on par with the city's impact fees, and she is happy to have the builders stepping up to the plate to address the issues. Dr. Venegas noted that

the coalition needs to have conversations with the city, the mayor, city council members and APS officials. The coalition representatives indicated they are having those conversations.

There was discussion about putting the students where there are schools, but Ms. Horton claimed that busing is expensive and impacts the quality of life for families. Since the Rio Grande is a natural boundary, busing kids across the river results in families moving back and forth to attend school functions, which can be disruptive. She noted that the northwest quadrant of APS did so, and it negatively impacted families regarding extracurricular activities.

There was testimony given about "facility fees" that are being collected in some areas (called clusters). These fees are paid "per house" that is constructed within the clusters. Alan Armijo testified that an oversight committee looks at the money along with other revenue such as bond revenue. He said the fee is a set rate, which is not based on the price of the house. The fees go into the general fund, which would indirectly impact bonding. Also, the fees would go to the cluster area in which the fees are generated; they would not be distributed district-wide.

Mr. Serrano testified that the fee is based on the building lot and is "passed-through" to the home buyer. Thus, the \$150 million projection of the fees will be "absorbed". This led to discussions about the Albuquerque metro area being the most heavily taxed in the state. Ms. Horton explained that there are eight other taxing entities in addition to the bonding, which is the basis for the statement in the handout. She explained that the voters retaliate and vote against the bonds because of the number of taxes.

There was discussion about Texas and Virginia, where the benefits of design/build alternatives, particularly for high-growth areas, have been recognized. For New Mexico, this can change depending upon whether the voters approve Constitutional Amendment Number 2 on November 7, 2006. Mr. Serrano commented that the voters see the state of New Mexico with a cash windfall, so they are less likely to approve increased taxes. Representative Miera asked if the west side is looking at impact fees. Mr. Serrano said the coalition supports impact fees, particularly for high-growth areas, but the fees only address the elementary schools and are not sufficient to cover junior and high school construction.

In response to more discussions about the *Zuni* lawsuit, Senator Tsosie asked what the coalition is proposing. Mr. Serrano requested that the legislature address these problems through the formula. Discussion ensued about the meaning of growth versus equity. Senator Tsosie recommended taking impact aid out of the funding formula. He suggested that Native American areas are actually more heavily taxed than the Albuquerque area. Mr. Serrano indicated that he speaks of "inequity" as "inadequacy".

There were questions about whether the *Zuni* lawsuit has resulted in less funding for the west side or Albuquerque area, but Ms. Tackett clarified that because of the established process, the lawsuit resulted in \$200 million going to APS, when in the past it did not receive funding. The West Mesa schools were ranked numbers one and two because of the growth factor.

Senator Nava suggested that the lawsuit has not been working against the west side; rather, there just is not enough money to address all the facility needs.

Adequacy Standards: Issues and Recommendations

The following individuals appeared before the task force:

- Dr. V. Sue Cleveland, Superintendent, Rio Rancho Public Schools;
- Walter G. Gibson, Superintendent, Los Lunas Public Schools;
- Toni Nolan-Trujillo, Superintendent, Pojoaque Valley Public Schools;
- Dr. Elizabeth Everitt, Superintendent, APS;
- Barbara Vigil-Lourder for Bernalillo Public Schools;
- Terry Coker for Dr. Sonia Diaz, Superintendent, Las Cruces Public Schools;
- Bobbie Gutierrez, designee for Dr. Leslie Carpenter, Superintendent, Santa Fe Public Schools; and
- Senator Nava spoke for the Gadsden Independent School District.

The above-named individuals expressed concern about the adequacy standards, PSFA construction oversight and other issues relating to the Public School Capital Outlay Act. The presentations were made from two handouts (see meeting file). They reviewed the contents of a letter, which had been sent from eight superintendents to Veronica Garcia, secretary of public education.

The presenters discussed several "unintended consequences" of the act:

- regulation has become more important than support;
- inflexible building standards have replaced local control;
- state-prescribed building priorities can override well-defined local needs;
- PSFA compliance has superseded assistance to school districts;
- the minimum standard for adequacy has become the "build to" standard;
- local projects and legislative appropriations often upset district master plan priorities; and
- there is a disconnect among the standards and the requirements of state educational and program initiatives.

Some concerns relating to PSFA construction oversight include:

- that the oversight has become overly regulatory and bureaucratic;
- that the prioritization of building projects based on current enrollment, rather than projected enrollment, unfairly penalizes growth districts through:
 - the need for portable facilities that are funded through operational budgets;
 - overcrowded schools and classrooms; and
 - the inability of these districts to implement their master plan in a timely manner;
- a lack of responsiveness to local needs and hidden costs; and
- a lack of support for viable construction options such as design-build.

It was noted that the adequacy standards as written do not:

- meet the program and curriculum needs of twenty-first century schools, particularly with regard to technology;
- consider variations in the size and locale of schools and districts;
- adapt to local program needs;
- have the flexibility to build for the future;
- provide for the technology needs of school and communities; or
- consider the many variations that exist across a complex, multicultural state.

Dr. Cleveland noted that projects need to be completed more quickly, that more portables are needed to address the rapid growth in some school districts and that new ways of looking at construction are needed. Dr. Gibson stressed the importance of community innovation and differing local needs/input. Some schools need a health care clinic (e.g., the east side of Los Lunas), whereas others do not. He asked that superintendents and district-level representatives be included in the capital outlay process. He was not proposing a complete overhaul of the process, but he suggested aligning the standards-based approach with local needs.

Regarding local needs, Superintendent Nolan-Trujillo stressed a need for trilingual programs (English, Spanish and Native American languages). Dr. Everitt noted her concern for performing arts programs and facilities to reflect both the needs of today and in the future. Ms. Vigil-Lourder requested a process for moving portables, saying the prepay costs are problematic. She noted that her district does not seek direct appropriations for public schools because it would negatively impact its public school capital outlay. She deals with seven governors from seven pueblos who have their own local needs. Ms. Gutierrez made note of the time delays and issues that Santa Fe has with portable classrooms. Mr. Coker testified that Las Cruces Public Schools support the design-build and the construction management-at-risk concepts. He reminded the audience that Las Cruces is surrounded by Bureau of Land Management and state land, limiting growth to certain areas.

There was some discussion about the costs of purchasing portable classrooms versus construction of new schools. Ms. Tackett noted that the law does allow the PSCOC to authorize the PSFA to buy portables for temporary use by school districts; however, funding was not set aside for this purpose. Senator Nava noted the high cost of moving portables.

Dr. Everitt noted that school districts and legislators need to commit first to funding the master plan of the districts. Dr. Venegas suggested more coordination between the schools and community improvements.

Although Representative Larranaga recommended that the local districts should fund the "adds" to go above the adequacy standards, the school representatives noted this is hard to do (e.g., to break out those items) since it impacts the related "program needs" in the schools. There was additional concern from the schools that the increases in construction costs are tied to the time it takes to obtain funding.

School district representatives feel the capital outlay process takes too long and steps should be taken to shorten the process. Some expressed concern that the design-build process as set up under PSFA does not work well. Mr. Gorrell gave a brief summary of the process. Mr. Guardiola said the process with PSFA has helped tremendously, especially for small school districts. Senator Nava pointed out that awards have only been done twice under the current standards, and the entire process is still in the early stages. Mention was made of the Adequacy Standards Advisory Group that has been working with PSFA and others to review and make recommendations for change, as needed, to the standards.

Approval of Minutes

The task force unanimously adopted the minutes for the September meeting of the PSCOOTF.

The task force decided to work through the lunch hour.

Proposal to Revise Current PSFA Oversight and Review Responsibilities

Ms. Santistevan offered a proposal to exempt from PSFA review certain types of school district projects. Currently, every new public or charter school campus and building as well as all additions, alterations and repairs to existing facilities go through a detailed review process, which involves review and approvals by several state agencies before any construction activities may begin. Reviews would still be required by other state agencies such as the Construction Industries Division of the Regulation and Licensing Department. It is estimated that about 30 percent of the projects currently being reviewed by PSFA would be eliminated from future review if the law is changed regarding the review process. This would free up staff for more critical assistance to the remaining school districts.

PSFA is asking the task force and the PSCOC to support the statutory change if the projects meet certain criteria, thus putting some routine projects on a fast track to completion. The projects proposed for exemption from PSFA review include:

- site grading and drainage improvements;
- playground equipment installation and repair;
- outdoor athletic playing surfaces (tennis and basketball courts, tracks, baseball fields, etc.) resurfacing and repairs;
- bus turnarounds, parent dropoffs and similar projects;
- parking lot resurfacing and repairs;
- window and door replacements;
- fences under six feet tall;
- shade structures;
- bleacher and canopy installations;
- sprinkler and irrigation system installations and repairs;
- interior and exterior lighting replacement;
- drop ceiling repair and replacement;
- low-voltage electrical items (intercom systems, etc.);
- permanent foundations for modular buildings; and

- sidewalks and other flat work not associated with larger projects.

This proposal was referred to PSCOOTF staff to determine if legislation is needed to implement the recommendations.

**Cost Savings Realized by Designating Portable Classrooms as Temporary Facilities:
Proposal to Construction Industries Division**

Mr. McMurray requested that the PSCOOTF support redefinition of "temporary" with regard to portable facilities and the necessary infrastructure that must accompany portables. There are less expensive ways of providing the required footings, utility hookups, access ramps, etc., when those approaches are truly designed for temporary, rather than long-term, use. Given the current usage of portables, PSFA estimates a savings of \$6 million per year statewide if the proposed changes are implemented.

Mr. Mulcock moved that the PSCOOTF adopt the recommendation for this cost savings; the motion was unanimously adopted.

PSCOC/PSFA: Other Issues and Priorities

This presentation was canceled.

The next meeting of the Charter School Subcommittee will be November 7, 2006 at 9:00 a.m., and the work groups on the adequacy standards and the lease-purchase proposal from Verde Realty will be held on November 8, 2006.

Tentative dates for the December meeting are December 21 and December 22 in Santa Fe at the State Capitol.

There being no further business, the task force adjourned.

Revised: December 19, 2006

**TENTATIVE AGENDA
for the
TENTH MEETING
of the
PUBLIC SCHOOL CAPITAL OUTLAY OVERSIGHT TASK FORCE**

**December 21 - 22, 2006
State Capitol, Room 307
Santa Fe**

Thursday, December 21

1:00 p.m. **Call to Order**

1:05 p.m. **Approval of Minutes**

1:10 p.m. **High School Redesign: Opportunities and Challenges for the Standards-based System**

Brief Overview

—Katy Harvey, Principal, Public Academy for the Performing Arts
Charter School, Albuquerque

Small Learning Communities

—Karen Alarid, AIA, Director, Facilities Design and Construction
—Debra Heath, Evaluator, Research, Development and Accountability,
Albuquerque Public Schools (APS)
—Allison Abraham, AIA, SMPC Architects

Career Pathways

—Dr. V. Sue Cleveland, Superintendent, Rio Rancho Public Schools

2:15 p.m. **Adequacy Standards Update: Recommendations from the Public School
Facilities Authority Adequacy Standards Advisory Group and the Ad
Hoc Review Group**

—Andre Larroque, AIA, Building Standards Specialist, Public School
Facilities Authority (PSFA)
—Martica Santistevan, Planning & Design Manager, PSFA
—John Petronis, AIA, President, Architectural Research Consultants
—Ray Vigil, AIA, ASA Architects Studio
—Toni Nolan-Trujillo, Superintendent, Pojoaque Valley Public Schools
—Paula Tackett, Director, Legislative Council Service

- 3:15 p.m. **Adequacy Standards Update: Technology in Education, HB 511 (2005 Legislative Session)**
—Dr. Tom Ryan, Chairman-elect, State Council on Technology in Education;
Commissioner, Information Technology Commission; Executive
Director of Educational Technology, APS
- 3:45 p.m. **Facility Information Management System (FIMS) Reporting: Regional Educational Cooperative (REC) #6 Report on Pilot Year for Small District Assistance with FIMS Reporting**
—Bob Bittner, Maintenance Coordinator, PSFA
—Patti Harrelson, Director, REC #6
—Lecil Richards, Facilities Consultant, REC #6
- 4:15 p.m. **PSFA Reduced Oversight in Selected Areas**
—Martica Santistevan, Planning & Design Manager, PSFA
- 4:30 p.m. **Public School Capital Outlay Oversight Task Force Charter School Subcommittee Report**
—Senator Cynthia Nava and Representative Rick Miera, Co-chairs
- 5:30 p.m. **Recess**

Friday, December 22

- 9:00 a.m. **Call to Order**
- 9:05 a.m. **Discussion and Adoption of Legislation for Task Force Endorsement**
—Task Force Members and Staff
- 11:30 a.m. **Working Lunch**
- 1:00 p.m. **Adoption of Legislation for Task Force Endorsement**
—Task Force Members
- 2:30 p.m. **Adjourn**

UNAPPROVED MINUTES
of the
TENTH MEETING
of the
PUBLIC SCHOOL CAPITAL OUTLAY OVERSIGHT TASK FORCE

December 21-22, 2006
State Capitol
Santa Fe, New Mexico

The tenth meeting of the Public School Capital Outlay Oversight Task Force (PSCOOTF) was called to order by Senator Cynthia Nava and Representative Rick Miera, co-chairs, at approximately 1:30 p.m. in Room 307 of the State Capitol in Santa Fe.

Present

Rep. Rick Miera, Co-Chair
Sen. Cynthia Nava, Co-Chair
Sen. Vernon D. Asbill
Pancho Guardiola
Leonard Haskie
Robbie Heyman (Dec. 21)
Anna Lamberson (Dec. 21)
Rep. Larry A. Larrañaga
Sen. Carroll H. Leavell
Kilino Marquez
Elizabeth Marrufo
Katherine B. Miller, Department of Finance
and Administration (DFA), with
Peter Winograd filling in
Don Moya for Veronica Garcia, Public
Education Department (PED)
Bud Mulcock
Rep. Henry Kiki Saavedra
Dr. Moises Venegas

Absent

Sen. Ben D. Altamirano
Gary Bland
Dr. Leslie Carpenter
Sen. Joseph A. Fidel
Cecilia J. Grimes
Speaker of the House Ben Lujan
Norman Suazo
Sen. Leonard Tsosie
Rep. W.C. "Dub" Williams

(Attendance dates are noted for members not present for both days of the meeting.)

Staff

Sharon Ball, Legislative Council Service (LCS) (Dec. 21)
Tim Berry, Public School Facilities Authority (PSFA)
Pauline Rindone, Legislative Education Study Committee (LESC)
Robert Gorrell, PSFA
Scott Hughes, DFA
Roxanne Knight, LCS

Antonio Ortiz, PED
Paula Tackett, LCS
Peter Winograd, DFA

Guests

The guest list is in the meeting file.

Copies of all handouts and written testimony are in the meeting file.

Thursday, December 21

The meeting was called to order at 1:30 p.m.

High School Redesign: Opportunities and Challenges for the Standards-Based System

Brief Overview

Katy Harvey, principal, Public Academy for the Performing Arts (PAPA) Charter School in Albuquerque, was to give a brief overview but was unable to attend because of a last-minute change in the meeting time for the Albuquerque Board of Education's meeting to discuss selected charter schools' audits, including PAPA's.

Small Learning Communities (SLC)

Representing Ms. Karen Alarid, AIA, director, facilities design and construction, Albuquerque Public Schools (APS) (who was unable to attend), Tyler Mason, together with Debra Heath, an evaluator for APS Research, Development and Accountability Department, and Allison Abraham, AIA, a staff architect with SMPC Architects, provided information to the task force on the evidence of the effectiveness of "small learning communities" (SLCs) in APS.

Ms. Heath explained that an SLC is a separately defined learning unit within a larger school. SLCs can improve school climate, attendance, grade completion and dropout rates, and faithful implementation of the SLC model yields the strongest results. The physical and organizational structures are key to SLC success, so it is best to incorporate the model into school construction projects.

In the fall of 2000, APS received a federal grant of \$2.4 million to create SLCs in six high schools over a three-year period (five freshman academies and one career academy). The goal was to make APS's large, anonymous schools feel smaller and safer and to make sure that every student received the personal support that would help the student succeed academically through to graduation and beyond.

SLCs are separately defined, individualized learning units within a larger school setting. A freshman academy is one type of SLC, focused at the ninth-grade level. Career academies are organized around career themes.

Ms. Heath reviewed the essential features of SLCs:

1. scheduling of teams of teachers and students in interdisciplinary teams;
2. teacher collaboration and integrated curricula;
3. common space that is separate from the rest of the school;
4. distinctive thematic or curricular focus; and
5. autonomy and flexibility to tailor instruction, schedules, hiring, professional development curriculum and assessment to the particular SLC interests and its students' needs.

The APS evaluation of the SLC programs produced the following results:

- well-implemented SLC programs produce statistically significant improvements in school climate, student dropout, attendance and grade completion;
- faithful implementation of the SLC model yields the strongest results; and
- teacher collaboration and team exclusivity are two keys to success.

The evaluation findings suggest that the following factors are crucial to successful SLC program implementation and optimal results:

- teachers meet and collaborate frequently;
- instruction is interdisciplinary;
- teacher and students are assigned exclusively to one team with no more than 120 students and no fewer than four teachers on each team;
- teaching teams are stable and consistent through multiple years;
- team teachers share common space separate from the rest of the school;
- each team has its own administrator; and
- additional funding is required for SLC-specific administrators, for maintaining low student-to-teacher ratios and for providing teachers with adequate time and/or stipends to support collaboration, development and student advising.

In terms of results of the APS evaluation of the implementation of SLCs, Ms. Heath indicated that the program achieved notable improvements in school climate, student attitudes and academic persistence. Specifically, she pointed out that, compared to their non-SLC counterparts:

- SLC students report feeling more visible, safer and more supported by peers and teachers;
- SLC students report experiencing higher academic expectations, feeling more engaged in their own schoolwork and having a better understanding of the connection between their high school studies and careers; and
- SLC students are more likely to attend classes, earn enough credits to pass to the next level and stay in school.

Ms. Heath's presentation included detailed drawings of the APS New Northwest High School design and the ways in which the design supports the SLC concept.

Career Pathways

Dr. V. Sue Cleveland, superintendent of the Rio Rancho Public Schools, gave a presentation on what is referred to as a "career pathway" program and the issues involved with having physical spaces (classrooms) to support such a program. She stressed an urgency in resolving the spatial issues and conflicts that exist with the PSFA facility guidelines and the career pathway model. She said that the guidelines do not capture the possible areas of facilities that are related to the model.

Dr. Cleveland explained that the United States Department of Education has identified 16 career clusters, which are groupings of similar skills and common themes. She said that career-cluster employment for students is available at various education levels. She opined that the career cluster concept helps students, parents, employers and educators understand the way in which curriculum relates to existing career opportunities. New Mexico has compressed the 16 clusters into seven priorities based on economic development and job projections. Career specialties are specific job titles within a pathway within a cluster.

The task force engaged in discussion about the need to focus students on career paths while they are in high school. Dr. Cleveland encouraged the task force to consider more "concurrent" enrollment among high schools and community colleges, giving students the opportunity to keep their momentum during the "weak senior year" of high school. Task force members indicated a desire to see more regional coordination with economic development efforts to determine what is needed in the labor force and career pathways.

Adequacy Standards Update: Recommendations from the PSFA Adequacy Standards Advisory Group and the Ad Hoc Review Group

Andre Larroque, AIA, building standards specialist from the PSFA, gave a detailed presentation on the recommendations (see the meeting file for the handout) made by the PSFA Advisory Group and the Public School Capital Outlay Council (PSCOC) Ad Hoc Review Group. Some key changes included adding several definitions for items such as educational technology and ancillary space; adding references to charter schools; eliminating terminology relating to certain minimums and maximums; and adding to descriptions of certain spaces (e.g., performing arts spaces and certain physical education spaces).

Toni Nolan-Trujillo, superintendent of the Pojoaque Valley Public Schools, reviewed the concerns of the superintendents with regard to the adequacy standards. She explained that the review process with the advisory group and the ad hoc review group had been very positive and productive.

Ray Vigil, AIA, ASA Architects Studio, underscored the two major items of change in the adequacy standard recommendations: the introduction of auxiliary gymnasiums and fine arts spaces.

Task force members engaged in considerable discussion about the process of change for the adequacy standards rules. In response to task force discussion and questions, Mr. Larroque explained that the proposed changes to the adequacy standards would be presented to the PSCOC and ultimately to the public through the state's rulemaking process.

Because of the amount of the rough estimates for some of the changes reported by PSFA (e.g., \$142 million to provide auxiliary gymnasiums in all schools that do not have them and \$204 million to provide performing arts centers in all schools that do not have them), the task force was advised that the PSCOC could exclude or modify some of the changes. Ms. Tackett clarified that current estimates provided are very tentative and that the PSFA staff will be providing a more thorough evaluation of the impact of the changes and estimated costs for long-term implementation.

Adequacy Standards Update: Technology in Education, HB 511 (2005 Legislative Session)

Dr. Tom Ryan, chair-elect, State Council on Technology in Education, and a commissioner on the Information Technology Commission as well as executive director of educational technology for APS, was not able to attend the meeting because of inclement weather.

Ms. Tackett offered remarks in Dr. Ryan's absence. She noted that there will be an educational technology proposal from the LESC appropriating \$24 million to PED to replace computers, which would be the first year of funding that is needed for a five-year cycle, and a \$27 million appropriation to the Educational Technology Deficiencies Correction Fund to address deficiencies in education technology infrastructure in the schools.

Facility Information Management System (FIMS) Reporting: Regional Educational Cooperative (REC) #6 Report on Pilot Year for Small District Assistance with FIMS Reporting

Bob Bittner, PSFA maintenance coordinator, reviewed the status of implementation of the FIMS software maintenance system for school facilities. He reminded task force members that FIMS is a tool for managing school facility maintenance that documents maintenance work, generates preventive maintenance information and serves as a data collection and analysis tool for both school districts and the state. He said that the legislature has consistently made funding available for school districts to acquire both software and training.

Mr. Bittner reviewed the implementation of the program, which was started as a pilot program in 18 districts during 2005. He told the task force that, currently, 78 of the state's 89 districts are using the system with many of them reporting positive results. He said that the remaining districts are expected to implement the system in 2007. In response to a task force question, he explained that the FIMS system is mandatory for those school districts that receive a PSCOC grant.

In addition to the data included in FIMS, Mr. Bittner reminded task force members that one of their 2006 legislative recommendations was the authorization of \$2.5 million from the Public School Capital Outlay Fund for a statewide facilities equipment inventory. He explained that these particular inventories go beyond simply accounting for equipment such as heating, ventilating and air conditioning (HVAC) systems and the number of fire alarms and fire extinguishers, backhoes and lawn mowers; they also account for any system that the district is responsible for inspecting and maintaining to prevent premature degradation.

In order to allow districts to have direct input into the actual inventory process, each district develops, issues and implements its own contract with PSFA, providing assistance as requested by individual districts. Once the data are gathered by the contractor, they are then included within the FIMS so that, for example, FIMS will generate routine preventive maintenance work orders.

Mr. Bittner recapped some of the previous testimony to the PSCOOTF during the 2005 interim regarding concerns that some smaller districts have expressed about implementation of FIMS because of insufficient maintenance staff and a shortage of administrative staff to do the data entry. He added that superintendents in smaller districts, particularly those with student enrollments of fewer than 200, are themselves responsible for day-to-day maintenance, in addition to their other administrative duties. In response to concerns of these superintendents, PSFA worked with staff at the REC #6 in Clovis to implement a pilot program to provide staff assistance to small districts with implementation of FIMS requirements.

Lecil Richards, facilities consultant to REC #6, gave a brief update on the REC/FIMS pilot study. By way of background, he said that in December 2005 REC #6 proposed that a regional "facilities maintenance person" be hired to provide assistance to member districts on facility issues, such as FIMS and equipment inventory. He noted that, initially, the concept was rejected because the legislature passed an increase in the Public School Capital Improvements Act (often called "SB 9" guarantee) from \$60.00 per mill per MEM to \$90.00 per mill per MEM. However, when the governor vetoed the increase, the PSCOC approved funding to support the REC #6 pilot study. In July 2006, Mr. Richards assumed his position as the REC #6 facilities coordinator and, since then, he has been assisting the REC #6 districts with the FIMS training and data entry, plus putting together the scope of work for a contracted equipment inventory for all 10 districts that belong to REC #6. Mr. Richards said he has been visiting districts that are members of REC #6, which include Dora, Grady, Melrose, Elida, Floyd, Texaco, House, San Jon, Fort Sumner and Logan. In response to a task force question, Mr. Bittner added that Mr. Richards had also been helping REC #6 members with FIMS training (mostly data entry) and providing assistance to districts in collecting floor space data to help set up the REC #6 group contract. Mr. Bittner also noted that Mr. Richards had coordinated setting up and issuing a single contract for nine of the REC #6 districts, thereby allowing these small schools to achieve economies of scale that often are limited to only larger districts.

PSFA Reduced Oversight in Selected Areas

Martica Santistevan, PSFA planning and design manager, reviewed the PSFA proposal to eliminate certain PSFA oversight and review of select public school capital outlay projects. She explained that the proposal had been developed because many of the school districts already rely on design professionals to assist them at all phases of the PSFA review process. Additionally, she noted that many projects involve small construction projects and minor repairs, such as window replacements, parking lot resurfacing, fencing, sprinkler and irrigation systems, light and ceiling replacements and siting grading or damage. She explained that about 30 percent, or 96 projects, currently needing PSFA approval would be excluded under the proposal for exemption.

She noted that the proposal would require a statutory change. During the task force discussion of the proposal, the task force agreed that implementation of the proposal would streamline the time lines for project completion for projects under \$200,000 and allow school districts to manage these smaller projects as they had done in years past.

The task force recessed until the next day.

Friday, December 22

The meeting was called to order at 9:30 a.m. by the co-chairs.

Minutes from the October 2006 meeting of the PSCOOTF were unanimously approved.

Discussion and Adoption of Legislation for Task Force Endorsement

Ms. Tackett and Gary Carlson, LCS contract drafter, presented drafts of potential legislation based upon the 2006 interim work of the task force, the Charter School Subcommittee and task force-appointed work groups. Ms. Tackett noted that today the task force would be considering more than 20 separate pieces of legislation but that, based upon the pleasure of the task force, most issues could be covered in a single omnibus bill with other, less closely related issues included in separate bills. The action taken and recommendations made on each draft are as follows:

1. 164273 — Proposes to provide a reduced offset for direct legislative appropriations in the amount of grant assistance pursuant to the Public School Capital Outlay Act for public school capital outlay projects, if the appropriations are for priority projects ranked among the top 150 in the New Mexico Condition Index (NMCI) ranking. Some task force members expressed concern about the possibility of *Zuni* lawsuit implications. *Adopted.*
2. 164276 — Proposes to amend the Public School Capital Outlay Act to allow, under certain circumstances, grants to be made for districts to purchase privately owned school facilities that are, at the time of the PSCOC grant application, in use by the school district. *Adopted in concept pending some adjustments suggested by task force members to clarify language in the bill.*

3. 164270 — Proposes to amend the Public School Capital Outlay Act to provide that a school district's local share of the cost of a PSCOC project may be reduced if it has been exemplary in developing and implementing a preventive maintenance plan. *Not adopted.* During their discussion, the task force members agreed the concept — providing an incentive for good maintenance programs — is laudable. Members suggested that the PSCOC consider developing rules to accomplish the same end and bring them to the task force during the 2007 interim for input and for possible reconsideration for legislation.
4. 164269 — Appropriates \$8 million from the general fund to purchase and install portable facilities to be loaned to school districts experiencing high growth. *Adopted.*
5. 164268 — Proposes to allow the PSCOC to exempt, by rule, certain types of construction projects costing \$200,000 or less from the requirement for approval by the PSFA. *Adopted.*
6. 164266 — Would amend the Procurement Code to provide for construction manager at risk contracts in the construction of public school facilities. *Adopted.*
7. 164445 — Would provide incentives for school districts that realize savings in the total cost of a PSCOC project. *Not adopted.*
8. 164548 — Would increase the SB 9 state guarantee from the current \$60.00 per mill per MEM to the proposed \$70.00 per mill per MEM. *Adopted.*
9. 164550 — Appropriates \$13.3 million from the general fund to the Public School Capital Outlay Fund for deficiencies in facilities at the school for the deaf and school for the blind and visually impaired. *Adopted.*
10. 164551 — Appropriates \$30 million from the general fund for grants and extends the deadline for expenditure of roof repair and replacement grants from September 1, 2008 to July 1, 2011. *Adopted.*
11. 164552 — Extends the time period from June 30, 2007 to June 30, 2008 for expenditure for the remaining PSCOC deficiency projects. *Adopted.*
12. 164549 — Creates a "public school opportunity fund" and provides several permanent revenue streams, including distributions to the fund of a portion of gross receipts tax revenue derived from public school construction projects and certain general fund reversions, to provide funds to allow certain qualifying districts to exceed adequacy standards on their PSCOC grant-funded projects. *Adopted with changes.*
13. 164274 — Would provide for additional PSCOC funds for qualifying districts to exceed adequacy standards in their PSCOC grant-funded projects. *Adopted.*

14. 163916 — Would remove the offsets for local districts for direct capital outlay appropriations made to state-chartered charter schools. *Adopted with changes.* Representative Saavedra voted in the negative.
15. 163923 — Would provide an annual adjustment in the amounts of grants to school districts for leased classroom spaces; increasing the amount from \$600 to \$700 per MEM and extending the period of time during which the grants can be made from FY 2010 to FY 2015. *Adopted.* Representative Saavedra voted in the negative.
16. 163847 — Would provide for an additional mill to be levied for the SB 9 mill levy upon approval of the district's voters to be distributed on the basis of enrollment to all schools within the district; would also provide that levying the additional mill would have no effect on the state guarantee. *Adopted.* Senator Leavell and Representative Larrañaga voted in the negative.
17. 163917 — Would require local school boards to include the capital needs of charter schools before adopting a resolution requesting voter approval of general obligation bonds and to provide a proportionate distribution of the proceeds to charter schools. *Adopted as amended by the task force to track with the language in 163846 (below).*
18. 164446 — Would require the PSCOC to consider concepts that promote efficient but flexible utilization of space. *Adopted.*
19. 163846 — Would amend the Public School Building Act (called "HB 33") to require that a proportionate share of revenue derived from taxes imposed pursuant to that act be distributed by county treasurers directly to charter schools, to extend the time period for which the taxes may be imposed from five to six years and to allow funds to be used for a portion of project management costs. *Adopted.*
20. 164616 — Would allow school districts to enter into lease agreements with charter schools and then keep the money from the lease agreements without that money counting against statutory cash balance limitations. *Adopted.*
21. 164267 — Enabling legislation for implementation of Constitutional Amendment #2, adopted by voters at the 2006 general election; providing that, under certain circumstances, agreements for the lease of school facilities with an option to purchase may qualify for PSCOC grant assistance. *Adopted.*
22. 164547 — Authorizes the issuance of revenue bonds to provide the match required for PSCOC grant awards to state-chartered charter schools. *Adopted.* Representative Saavedra, Senator Leavell, Dr. Venegas and Secretary Miller voted in the negative.

Task force members also agreed upon criteria for awarding grants from the Educational Technology Deficiency Correction Fund and appropriating money to the fund and to the PED for replacing computers. They also agreed upon language to reconcile conflicting laws relating to public school transportation services and transportation distributions for charter schools.

Working through lunch and into the afternoon, task force members agreed to appoint a subcommittee, which will meet on January 14, 2007 at 4:00 p.m. in the State Capitol, to review task force-recommended adjustments to the legislative proposals and to recommend legislation for task force endorsement. The task force agreed by consensus to allow staff to make editorial changes as necessary and to consult with task force co-chairs before making substantive changes.

There being no further business to come before the task force, the meeting adjourned at approximately 3:00 p.m.

Charter School Subcommittee

**TENTATIVE AGENDA
for the
FIRST MEETING
of the
PUBLIC SCHOOL CAPITAL OUTLAY OVERSIGHT TASK FORCE
CHARTER SCHOOL SUBCOMMITTEE**

**September 11, 2006
Room 315, State Capitol
Santa Fe**

Monday, September 11

- 9:00 a.m. **Welcome and Call to Order**
- 9:05 a.m. **Charter School — Capital Outlay — History**
—David Harrell, Research Analyst, Legislative Education Study Committee (LESC)
—Don Moya, Deputy Cabinet Secretary, Public Education Department (PED)
—Sharon Ball, Researcher, Legislative Council Service (LCS)
- 10:15 a.m. **SB 600 Outline and Discussion**
—Willie Brown, General Counsel, PED
—Jonelle Maison, Senior Bill Drafter, LCS
- 10:45 a.m. **Public Education Commission (PEC) Authorized Charter Schools and *Zuni* Lawsuit Implications**
—Paula Tackett, Director, LCS
- 11:30 p.m. **Lunch**
- 1:00 p.m. **Charter School Facilities and the 2010 Statutory Requirement — Superintendent Discussion**
—Leslie Carpenter, Superintendent, Santa Fe Public Schools
—Michael Gottlieb, Superintendent, Roswell Independent Schools
—Elizabeth Everitt, Superintendent, Albuquerque Public Schools
- 1:45 p.m. **Charter School Facility Funding Issues — Discussion**
—Don Duran, Director, Charter Schools Division, PED
—Lisa Grover, Executive Director, New Mexico Coalition for Charter Schools
—Gretta Roscum, Principal, Robert F. Kennedy Charter School
—Tony Gerlicz, Principal, Monte Del Sol Charter School
- 2:30 p.m. **Charter School Facility Funding Options**
—Subcommittee Members and Staff
- 4:00 p.m. **Public Comment**
- 4:30 p.m. **Adjourn**

**MINUTES
of the
FIRST MEETING
of the
PUBLIC SCHOOL CAPITAL OUTLAY OVERSIGHT TASK FORCE
CHARTER SCHOOL SUBCOMMITTEE**

**September 11, 2006
State Capitol, Room 315
Santa Fe, NM**

The first meeting of the Charter School Subcommittee of the Public School Capital Outlay Oversight Task Force (PSCOOTF) was called to order by Senator Cynthia Nava and Representative Rick Miera, co-chairs, at 9:15 a.m. in Room 315 of the State Capitol in Santa Fe.

Present

Rep. Rick Miera, Co-chair
Sen. Cynthia Nava, Co-chair
Sen. Vernon D. Asbill
Dr. Anna Lamberson
Rep. Larry A. Larranaga
Sen. Carroll H. Leavell
Don Moya
Bud Mulcock

Absent

Robbie Heyman
Sen. Leonard Tsosie

Staff

Paul Aguilar, Legislative Finance Committee (LFC)
Sharon Ball, Legislative Council Service (LCS)
Tim Berry, Public School Facilities Authority (PSFA)
Doris Faust, LCS
Robert Gorrell, PSFA
Dr. David Harrell, Legislative Education Study Committee (LESC)
Jeremy LaFaver, LCS
Antonio Ortiz, Public Education Department (PED)
Dr. Pauline Rindone, LESC
Paula Tackett, LCS

Guests

The guest list is in the meeting file.

Copies of all handouts and written testimony are in the meeting file.

Monday, September 11, 2006

Charter School — Capital Outlay — History

Dr. Harrell, Mr. Moya and Ms. Ball presented a historical background of the law governing charter schools, facility issues for charter schools and the lease-payment program allowed for which charter schools can qualify.

Dr. Harrell outlined the history of charter schools, which were first established in 1993 with the passage of the first charter school legislation in New Mexico. The first charter school law, which was considered to be conservative in national comparisons, allowed the creation of five conversion charter schools. After passage of completely revamped charter school legislation in 1999 (Chapter 22, Article 8B NMSA 1978), Dr. Harrell explained that dissatisfaction with the current law from both charter schools and school districts has resulted in the establishment of several work groups to study issues of concern and a variety of piecemeal amendments to the original law. Passage of SB 600 in 2006 added the Public Education Commission (PEC) to local districts as possible chartering authorities. Dr. Harrell noted that, besides the creation of dual chartering authorities, SB 600 made several other changes to the original 1999 act and that Jonelle Maison, LCS senior drafter, and Willie Brown, PED general counsel, would cover other changes to the original 1999 act brought about by passage of SB 600.

Mr. Moya reported on the history of the lease-payment program for charter schools. He said that the legislature authorized up to \$600 per MEM for charter schools to use for lease payments. This amount was changed in 2005 from \$300 per MEM to \$600 per MEM. To cover lease payments, Mr. Moya stated that the legislature has authorized the Public School Capital Outlay Council (PSCOC) to expend up to \$7.5 million annually in fiscal years 2006 through 2010 for facilities leased by charter schools during the transition period, until before 2010 when charters are to move into public facilities. The amount was increased from \$4 million in 2005 to the current \$7.5 million annually through 2010.

Ms. Ball rounded out the discussion by outlining the specific capital outlay issues associated with charter schools. She said that charter school proponents on the original charter school work group, which was established by PED in 1998 to make the original, updated charter school legislative proposal, stated that the charter schools it was proposing would have no need for capital outlay dollars and would never need capital funds for their facilities.

In response to the capital needs of charter schools that arose quickly after the passage of the original act, several work groups were assembled, yet no legislation pertaining to facility needs as recommended by these groups passed until 2005. The 2005 law's provisions:

- require school districts to provide facilities to a charter school if they have space available that is not being used for educational purposes (defined in the legislation) and prohibit a school district from charging a charter school more than the actual direct cost of providing the facilities;
- after July 1, 2005, require facilities of a new charter school to meet state life and health safety codes related to educational occupancy;

- require charter school facilities in existence before July 1, 2005 to meet the statewide adequacy standards during the same time frame as other public schools are being brought up to standards, supported by PSCOC grants. To bring charter schools in leased facilities up to adequacy, additional lease payments for leasehold improvement may be used;
- require that, after July 1, 2010, the charter for a charter school will not be renewed unless the school is housed in a public building that meets the adequacy standards. There are two exceptions, however: 1) if a suitable public building is not available, CS/HB 510 (2005) allows the school to be in a nonpublic facility if the owner is contractually obligated to maintain adequacy standards at no additional cost to the charter school or the state; and 2) the bill allows a charter school to be housed in a facility owned by a nonprofit entity specifically organized to provide the facility for the charter school if the owner maintains the facility to adequacy standards at no additional cost to the charter school or the state;
- allow lease payment funds to flow to charter schools during their first year of operation;
- allow a conversion charter school to continue using the facilities and equipment it had been using prior to conversion; and
- make charter school facilities eligible for state and local capital outlay funds and require that those facilities be included in the five-year facilities plan developed by the school district in which the charter school is located.

In response to questions from subcommittee members, staff said that there are currently four charter schools in the Albuquerque Public School (APS) district that are in public buildings and there are possibly another half-dozen that are in public buildings throughout the state, which means that only approximately one-sixth of the charter schools in the state are in public buildings.

Representative Larrañaga questioned PED staff about what they are doing to prepare to implement the dual chartering authority provisions of SB 600. Dr. Don Duran, PED assistant secretary for charter schools, said that since July 10, 2006, PED has been providing workshops that examine the roles of each of the three entities involved: PEC, local districts and charter schools. He noted that another workshop is scheduled for representatives from APS, 10 APS charter schools and PED to define the roles of each. Currently, the roles for the district, the charter school and the department are unclear and those involved are working to clarify each entity's role.

The subcommittee had a brief discussion on whose responsibility it is to ensure a charter school makes adequate yearly progress (AYP). Dr. Duran said that, if the charter is authorized locally, the district would be responsible, but it is unclear who would be responsible if the charter is authorized by the PEC.

In response to several related questions, subcommittee members learned that only one of the original five charter schools established in 1993 — Turquoise Trail Elementary School in Santa Fe — continues to operate and that one charter school had its charter revoked because of financial

mismanagement on the part of the charter school operators. PED staff also pointed out that PED has restructured two charter schools, also because of finance management concerns, since implementation of the 1999 law.

A discussion about the calculated offsets for direct appropriations followed. In response to several questions, subcommittee members were told that the offset is taken off the next PSCOC grant. In response to an additional question, Ms. Ball explained that theoretically, a district could choose never to apply for another PSCOC grant, then concentrate on obtaining as much funding as possible from direct appropriations and thereby avoid the offset. She noted, however, that the likelihood of having this situation occur is very small.

Senator Nava asked if any district had refused an appropriation because of the offset. Mr. Ortiz, PED capital outlay director, explained that the Taos Municipal Schools refused a total of \$300,000 in direct appropriations from the 2006 legislature for a charter school multipurpose room. He noted that, rumors to the contrary, Taos is the only district that has refused any direct appropriations. Several guests commented on the difficulties associated with rejecting direct appropriations, emphasizing their belief that maintaining good relationships with their local legislators is extremely important to districts.

SB 600 Outline and Discussion

Ms. Maison and Mr. Brown outlined the contents of SB 600 and highlighted the key components of the bill, which was passed and signed during the 2006 session. A copy of Ms. Maison's presentation is included in the meeting file. Ms. Maison told the subcommittee that the main provision of SB 600 was the dual chartering authority. With the enactment of this piece of legislation, a charter school has the option of choosing its chartering authority — the PEC or the local school district — and may change that chartering authority when its charter is up for renewal. A charter school in existence on July 1, 2007 may change its chartering authority to the PEC but must continue to operate under the previously approved charter. An application for a charter school filed with a local school board prior to July 1, 2007, but not approved, may be transferred to the PEC on July 1, 2007.

Ms. Maison highlighted some of the general provisions and noted that the legislation:

- requires governing boards of state-chartered charter schools to qualify as boards of finance;
- states that "a charter application may be denied if the proposed head administrator or other administrative or fiscal staff was involved with another charter school whose charter was denied or revoked for fiscal mismanagement or the proposed head administrator or other administrative or fiscal staff was discharged from a public school for fiscal mismanagement";
- allows for state-chartered charter schools to submit their proposed budgets through PED and locally chartered schools to continue to submit budget proposals through their district;
- mandates that all statutory and rule provisions pertaining to budgets, reports, etc., that apply to school districts apply to state-chartered charter schools;
- allows for charter schools to be eligible to receive all of the funding for growth that their students generate through the funding formula; and

- gives state-chartered charter schools the ability to be eligible for supplemental distributions, including emergency supplemental, program enrichment, special vocational education and emergency capital outlay distributions. Locally chartered schools are not eligible for these supplemental distributions.

Ms. Maison outlined the areas of the Charter Schools Act that were modified. She said that, effective July 1, 2007, conversion schools will not be allowed, governing bodies of charter schools must have at least five members, a charter school may not contract with a for-profit entity for its management and charter schools must comply with all applicable state and federal laws and rules related to providing special education. In addition, she noted that several waivers were granted for state-chartered charter schools, such as requirements pertaining to class load, teaching load, length of school day, staffing patterns, subject areas, purchase of instructional material, evaluation standards for school personnel, school principal duties and driver education. She said that the legislation allows PED to waive graduation requirements on a case-by-case basis.

Ms. Maison described additional modifications to the application process for charter schools, including the following.

- An application for a start-up school may be made by one or more teachers, parents or community members or by a public post-secondary educational institution or nonprofit organization.
- After June 30, 2007, an initial application cannot be made if the proposed charter school's proposed enrollment for all grades would equal or exceed 10 percent of the total MEM of the school district in which the charter school is geographically located and the school district has a total enrollment of not more than 1,300 students. Ms. Maison noted that this provision was included in the legislation as a means to protect small school districts from being rendered inoperable because of loss of students.
- The organizers of a proposed charter school must provide written notification of intent to establish a charter school to the PEC and the local school district at least 180 days prior to initial application.
- The act provides for an appeal process to the secretary of public education for denials, suspensions or revocations of charters.
- To renew a charter, the application must include a petition in support of the charter school signed by at least 75 percent of the households whose children are enrolled in the school, an increase over the 50 percent included in the original legislation.

Ms. Maison explained that the amendments in SB 600 clarify that all charter schools are subject to constitutional and statutory limitations regarding the acquisition and disposal of property. If a charter is terminated, all assets of the PEC-chartered school revert to the state; assets of a locally chartered school revert to the school district. Charter school applications must include a detailed description of the charter school's projected capital outlay needs, including projected requests for capital outlay assistance. Also, the term "school district" in the Public School Capital Outlay Act includes state-chartered charter schools. Lastly, the bill provides for the PSCOOTF, in consultation with the PSCOC, PED and the PSFA to study statutory provisions governing the funding of charter school capital outlay facilities, transportation costs and other capital outlay issues.

In response to a question from Dr. Lamberson, Ms. Tackett explained that charter schools are required to be included in a district's facilities master plan (FMP). Dr. Lamberson questioned why some charters rank high within the PSCOC rankings, but not within their respective district's priorities. Senator Nava pointed out that the situation Dr. Lamberson describes can sometimes be the opposite as well: some schools rank high with their district's priorities but not within the priorities of the PSCOC.

In response to a subcommittee question, Dr. Duran stated that somewhere between 20 and 25 charter schools have been approved in the last four years. A lengthy discussion ensued regarding charter schools' eligibility for small district and small school size multipliers in the funding formula. Dr. Harrell explained that charter schools are eligible for the small school size adjustment but not the small district adjustment. It was further noted that locally authorized charter schools are allowed to be included in a district's bond election, while a PEC-authorized charter would not be eligible for local bond proceeds.

Mr. Brown highlighted several factors included in SB 600. He said that a charter must provide written notification of intent to establish a charter by February 1 of the year in which it is to apply. He noted that this date is during the legislative session and that in some instances the timing may create a problem. He also said that the language concerning conversion schools may have to be cleaned up to coincide with existing law regarding conversion schools. He highlighted the fact that the law now allows for the chartering authority to withhold two percent of a charter school's state equalization guarantee (SEG) allocation for the chartering authority's administrative support of the charter school.

Senator Asbill asked how the transportation allocations are going to work under the new law, and Ms. Tackett informed the subcommittee that the department will provide a presentation to the subcommittee at the next meeting with suggestions for implementation of the transportation provisions.

In response to a question from Representative Miera regarding the way in which SB 600 affects public school capital outlay funding, Mr. Brown stated that SB 600 addresses the issue of charter school capital outlay funding and its effect on overall public school capital outlay funding by establishing this subcommittee and requiring it to propose potential solutions for funding charter school capital outlay needs. Ms. Tackett said that Robert Desiderio would be working with the task force to come up with potential solutions. She also noted that a later item on today's agenda examines this issue.

Representative Larrañaga asked about the state's position in regard to implementation of the *Zuni* remedies if PEC-chartered schools receive 100 percent of funding for their capital outlay needs. In addition, he asked that if a PEC-chartered school must come up with a local match for any PSCOC grant in order to comply with *Zuni*, why shouldn't the charter school have access to the local tax base? Ms. Tackett said that in order to allow those schools access to the local tax base, SB 600 would need to be amended in the upcoming legislative session.

Lastly, Senator Nava questioned if anybody is pushing for the passage of Constitutional Amendment Number 2 dealing with lease-purchase agreements. Mr. Moya stated that he has made a request of the executive to see where it stands on this issue but has yet to receive a response.

Charter School Facilities and the 2010 Statutory Requirement — Superintendents' Discussion

Dr. Leslie Carpenter, Santa Fe Public Schools (SFPS) superintendent; Dr. Elizabeth Everitt, APS superintendent; and Dr. Duran provided insight into issues that districts are facing regarding charter school facility funding and the requirement that all charter schools be in public buildings by 2010.

Dr. Everitt discussed a current collaborative agreement in which APS is working with a charter school in its district to provide services to urban Native American students. She said that, in her opinion, the collaboration is working well and that the district is looking at cooperative charters and the option of dual facility use for charters and regular public schools. Dr. Everitt also said that charter schools are currently in the district's FMP, but that they are not yet funded within the plan. She said that the district's capital master plan director, Mr. Kizito Wijenje, and other stakeholder groups conducted a study to incorporate each of the charter schools into the district's FMP. In response to a subcommittee question, Mr. Wijenje said that the plan includes a range of options included in the FMP to comply with the 2010 requirement that charter schools be in public buildings. Dr. Everitt added, however, that she believes the district and the charter schools will have difficulty in locating each charter school within APS into a public building by 2010.

Dr. Carpenter said that her district's FMP currently includes no charter facility provisions. She feels that the district should prioritize its available funding so that schools that already have students are the priority and not schools that may potentially have students in the coming years. She also said that she would like to have charter facilities funded outside of a district's capital needs so that the needs do not compete with one another.

Representative Miera asked for an update on the East Mountain area gymnasium that was constructed for the county and the school district as a joint-use facility. Superintendent Everitt stated that the gymnasium cost was not offset. Ms. Ball said that, because the county had received the funding through the Local Government Division (LGD) of the Department of Finance and Administration (DFA) and was primarily responsible for the building's use and that the East Mountain High School is only one of several entities using the gymnasium, APS should not be required to absorb the offset for this particular facility. She noted, however, that simply appropriating funds to the LGD for local municipality charter school joint-use facilities is no guarantee that the offset would not apply to the local district.

As the discussion turned to the point of the calculated offset, Dr. Carpenter said that when her district included charters in its FMP, it did so under the provisions of each charter's original charter. She said that in a charter school's renewal of its charter, the district could reject the renewal on the basis that adding programs could result in a need for new or additional facilities. She also said that her district has formed a task force to look at consolidation of existing district facilities and that this task force is recommending that these facilities not house charter schools since the reason for the consolidation is for generating assets to make up for the nearly \$6 million projected budget deficit SFPS is facing.

The task force also discussed the limitations of using public funds for improvements to nonpublic buildings. Ms. Tackett said that historically, only tenant improvements can be made. She further added that only funds generated by the state are subject to the antidonation clause in the state constitution. Mr. Moya clarified that general obligation bond proceeds cannot be used for tenant improvements, but that SB 9 (Public School Capital Improvements Act) funds and developer impact fees can be used as such.

Referring to an earlier point, Dr. Lisa Grover, New Mexico Coalition for Charter Schools, said that the matrix required in the application process for a charter school goes beyond what is required by law. She asked for information regarding charter school representation on the group that developed the matrix.

Charter School Facility Funding Issues — Discussion

Dr. Duran, Dr. Grover, Greta Roscum and Tony Gerlicz began a discussion of the issues related to charter school facility funding. Dr. Grover said that the lease payment provisions in the law are supported by the coalition and requested that the program be extended until 2015. She said that having the state provide funding for lease payments provides equity and flexibility to charter schools. She said it also creates a reliable funding source upon which charter schools can base their budgets. Mr. Gerlicz added that the lease reimbursement provision allows stability for creative financing options. Dr. Grover said that, at the current reimbursement rate, only three charter schools in the state have enough funding to cover the entire amount of their respective leases and that she would be interested in entering into discussions regarding increasing the amount from \$600 per student.

Senator Nava asked if the overall cost of leases increased when the per student allocation went up from \$300 to \$600. Dr. Grover said she does not have the data to respond accurately to that question, but assuming the cost of leases would increase as the source of funding increases is a logical assumption. In response to subcommittee questions regarding the possibility of charter schools' entering into lease agreements, Mr. Moya said that schools can enter into multiple-year leases as long as language in the lease agreements includes a funding contingency to ensure that a charter is not entering into debt.

Dr. Lamberson presented some options regarding the amendment of the lease payment program. Suggesting that the \$600 per student amount is a stop-gap measure, she proposed stipulations to increase the amount of the lease payment at the rate of inflation with the total amount to be capped at the rate of the lease. Senator Nava added that another option would be to include a cost-of-living index to account for the fact that some areas of the state have higher leasing rates than others.

Charter School Facility Funding Options

Mr. Ortiz outlined a variety of options for the subcommittee to consider. Accompanying his options were a number of charts that illustrate what would happen if various options are enacted. The charts are in the meeting file. The options discussed are to:

- distribute SB 9 dollars to charter schools on the basis of the program units that their students generate;
- distribute local general obligation bonds to charter schools on the basis of program units;

- make charter school capital outlay a part of the statewide general obligation bonds every two years;
- increase the SB 9 funding by one-half mill, which would be designated for charter school capital outlay expenditures;
- increase the SB 9 dollars by one-half mill for distribution on the basis of program units;
- increase the SB 9 dollars by one mill for distribution on the basis of program units; and
- take an offset for capital money from PEC-chartered schools.

Mr. Moya asked if distributing local bonds on a per unit basis would require a statutory change. Mr. Ortiz stated that a statutory change would be necessary to allow general obligation bond funds to charter schools on a per unit basis. Mr. Ortiz clarified for Senator Leavell that the options he presented cover PEC-chartered schools only.

Representative Miera expressed concerns about the effect of passage of the lease-purchase constitutional amendment on SB 9 revenues. Dr. Lamberson noted passage of the amendment will not obviate the need for a permanent revenue stream to pay for lease-purchase agreements. She questioned if the SB 9 revenue stream and revenues from sponge bonds could be used to guarantee bonds for charter school facility needs. She thinks that the state's gross receipts tax revenues could secure charter school bonds.

The subcommittee outlined the options it would like to explore in the coming months. Members suggested extending the 2010 requirement for charter schools to 2015, extending the lease-payment program to be contingent on guaranteeing it with some permanent revenue stream and increasing the SB 9 revenue stream by one mill and distributing the extra mill on a per unit basis. The subcommittee also requested additional information on several other related charter school capital outlay funding source issues, including the use of industrial revenue bonds, offsets for PEC-chartered schools and whether the offset should be applied to the charter school or to the local school district.

Dr. Lamberson requested that staff look at the amount of funding each mill would generate in a statewide general obligation bond election. She also requested a historical look at each district's outstanding debt.

Adjournment

There being no other business before the subcommittee, the members adjourned at 3:10 p.m. and agreed to meet again in November pending approval by the New Mexico Legislative Council.

**TENTATIVE AGENDA
for the
SECOND MEETING
of the
PUBLIC SCHOOL CAPITAL OUTLAY OVERSIGHT TASK FORCE
CHARTER SCHOOL SUBCOMMITTEE**

**November 7, 2006
Room 315, State Capitol
Santa Fe**

Tuesday, November 7

- 9:00 a.m. **Welcome and Call to Order**
- 9:05 a.m. **Approval of Minutes**
- 9:10 a.m. **Charter School Transportation Costs**
—Gilbert Perea, Assistant Secretary for Program Support and Student
Transportation, Public Education Department (PED)
- 10:00 a.m. **Subcommittee Requests for Information**
—Sharon Ball, Researcher, Legislative Council Service (LCS)
—Antonio Ortiz, General Manager, Capital Outlay Bureau, PED
- 10:30 a.m. **Context for Charter School Capital Outlay Funding Options**
—Dr. Anna Lamberson, Budget Officer, City of Albuquerque; Member,
Public School Capital Outlay Oversight Task Force (PSCOOTF)
—Robbie Heyman, Attorney, Sutin Thayer & Browne
—Don Moya, Deputy Secretary, Finance and Operations, PED
—Willie Brown, General Counsel, PED
—Paula Tackett, Director, LCS
- 11:30 a.m. **Lunch**
- 1:00 p.m. **Bill Draft Discussions**
—Committee members and staff
- 3:30 p.m. **Subcommittee Recommendations for Charter School Capital Outlay and
Transportation Legislation for PSCOOTF Endorsement, 2007 Legislature**
—Committee members
- 4:30 p.m. **Adjourn**

**MINUTES
of the
SECOND MEETING
of the
PUBLIC SCHOOL CAPITAL OUTLAY OVERSIGHT TASK FORCE
CHARTER SCHOOL SUBCOMMITTEE**

**November 7, 2006
State Capitol, Room 315
Santa Fe, NM**

The second meeting of the Charter School Subcommittee of the Public School Capital Outlay Oversight Task Force was called to order by Senator Cynthia Nava and Representative Rick Miera, co-chairs, on November 7, 2006 at 9:15 a.m. in Room 315 at the State Capitol, Santa Fe.

Present

Rep. Rick Miera, Co-chair
Sen. Cynthia Nava, Co-chair
Sen. Vernon D. Asbill
Dr. Anna Lamberson
Sen. Carroll H. Leavell
Don Moya
Bud Mulcock

Absent

Robbie Heyman
Rep. Larry A. Larrañaga
Sen. Leonard Tsosie

Staff

Paul Aguilar, Legislative Finance Committee (LFC)
Sharon Ball, Legislative Council Service (LCS)
Tim Berry, Public School Facilities Authority (PSFA)
Corina Chavez, Public Education Department (PED)
Robert Gorrell, PSFA
Frances Maestas, Legislative Education Study Committee (LESC)
Jonelle Maison, LCS
Roxanne Knight, LCS
Antonio Ortiz, PED
Paula Tackett, LCS

Guests

The guest list is in the meeting file.

Copies of all handouts and written testimony are in the meeting file.

Tuesday, November 7

Charter School Transportation Costs

Gilbert Perea, assistant secretary for program support and student transportation, PED, discussed PED's proposal to provide transportation to students attending state-chartered charter schools as required in SB 600, which passed the 2006 legislature and becomes effective July 1, 2007.

Mr. Perea explained that the current public school transportation formula is based upon a statistical regression model and is divided into two funding tiers that separate funding characteristics for school district enrollment above and below 1,000 students. He added that the transportation formula also includes "per capita mileage reimbursement" for parents who must drive their children to school or to a district school bus pickup point when regular school bus transportation services are not available or are impractical because of distance, road conditions or sparseness of population, or when the local board has authorized a parent to receive reimbursement for travel costs when the board has allowed a child to attend a school outside the child's regular attendance zone.

He said that PED's proposed model for state-chartered charter schools would establish a third set of funding characteristics based upon current experience in expenditures and services. He provided the subcommittee with the following proposed figures for charter schools:

- for school bus mileage, \$1.83 compared to \$0.59 for school districts with enrollments greater than 1,000 and \$0.85 for school districts with enrollments fewer than 1,000; and
- for per capita mileage reimbursement, \$0.20 projected.

In response to members' questions, Mr. Perea stated that the regression model that was used for the proposed charter school transportation costs is based upon PED's current experience with five charter schools. He acknowledged that data from only five schools are not enough for a statistically valid regression model, but that PED would make adjustments as more schools use district transportation services. In response to an additional question, Mr. Perea stated that in the Clayton district, the funding provided for the Amistad Charter School is "a wash" based upon the fact that, if the charter school did not exist, the students would have to be transported to and from school anyway.

When members of the subcommittee expressed concerns about making a cost determination (and therefore a request for funding from the legislature) based upon data from only five schools, Mr. Perea stated that he believes that PED would continue to use current expenditure data for the FY08 request but would use additional data (based upon participation from additional charter schools) with full implementation in FY09. He reiterated that PED expects to make adjustments as more charter schools take advantage of state-funded transportation funding.

Subcommittee members expressed concerns about the unpredictability of increases in transportation funding once the legislation goes into effect. In response to some subcommittee comments, Dr. Lisa Grover, executive director, New Mexico Coalition of Charter Schools, stated that passage of the legislation "takes the politics out of [the transportation issue]". She reported that district school buses in some districts pass directly by charter schools on their respective routes, but

because of "politics", the district will not allow the buses to pick up charter school students at stops along their respective routes and drop the students off at the charter school.

In response to a question from Ms. Maestas regarding the effect of transporting charter school students on district buses, Mr. Perea stated that PED expects little or no effect on current equipment unless charter schools have bell schedules that are substantially different from local district bell schedules. Ms. Maestas asked if a charter school could request its own school bus. Mr. Perea responded that it is a possibility, but what would be more likely would be for a charter school to contract with a provider for its own services.

In response to a question from Dr. Lamberson about the use of municipal buses to transport charter school students, Mr. Perea stated that PED allows transportation of students only on school buses and via approved reimbursement to parents or guardians through per capita feeder provisions of rule. In response to additional comments and questions on the subject of using municipal buses, Mr. Perea stated that the rule is in place and enforced because of considerations such as liability and safety.

The subcommittee requested that Mr. Perea examine the issue further by taking into consideration costs to transport additional charter school students and projections farther into the future and report back to the subcommittee at its next meeting.

Subcommittee Requests for Information

Ms. Ball explained that the subcommittee had requested additional information on costs for various modifications to the Public School Capital Improvements Act to include charter schools and on the current matrix required by PED for potential charter schools applying to their respective districts.

Mr. Ortiz provided subcommittee members with four tables labeled "Capital Improvements Act (SB-9): One Additional Mill", versions A-D. Directing members' attention to the "A" table, Mr. Ortiz discussed the effect of the addition of an additional mill to the two already provided for in current statute. He noted that in Albuquerque, for example, an additional mill would generate nearly an additional \$12.0 million and additional state guarantee funding of approximately \$960,000. Directing members' attention to the "B" table, Mr. Ortiz explained that this table represents a detail of the "A" table in that it illustrates the extra mill distribution by student (MEM) among the charter schools.

Subcommittee members noted that, if proceeds from imposition of the entire additional mill are designated for charter school capital outlay needs, charter schools would have enough funding for capital improvements only if they are willing and able to keep the funds together for larger, prioritized projects on a school-by-school basis as opposed to dividing the amount among all charter schools within the district. In response to subcommittee members' discussion and questions, staff indicated that it would be possible to complete a more comprehensive evaluation of charter school facilities than is currently in the 3-DI Index by using contracted architects and planners to complete the evaluations. In response to additional questions, Mr. Gorrell indicated that this evaluation could be completed within a relatively short period of time so that these charter school evaluations could become part of the database during this funding Public School Capital Outlay Council cycle.

Mr. Ortiz noted that the tables labeled "C" and "D" were, respectively, additional details from the "A" table with a total three-mill levy showing the local SB 9 share distributed by student and the state guarantee distributed by funding unit for the 2005-06 school year and the same information based upon initial property valuations for the 2006-07 school year.

Ms. Ball provided the subcommittee members with copies of the PED "Procedures for Application and Renewal as a Charter School" matrix. Ms. Ball indicated that, according to records from meetings at which the matrix was developed, Dr. Grover had represented charter schools. Dr. Grover indicated that her participation had been minimal because the matrix had been presented to her as a "done deal" and that she had been allowed very little input on behalf of the New Mexico Coalition of Charter Schools. Dr. Grover also reiterated that the information required by this matrix is voluminous and that some changes in wording could work toward reducing the volumes of paper required to respond appropriately. As an example, she directed the subcommittee's attention to Item 9 on page 2, which requests the applicant to provide "a specific, detailed description of all curriculum (whether in one or two languages) including scope and sequence and student performance standards". Dr. Grover indicated that an appropriate response to this request could require more than 1,000 pages to respond appropriately depending, for example, upon the number of grade levels served in the school.

Context for Charter School Capital Outlay Funding Options

Ms. Tackett and subcommittee members discussed aspects of the Zuni Special Master's Report as they would relate to a capital outlay distribution for charter schools. Members noted that a persistent problem for charter schools, whether they would be chartered by the local district or the state, is the fact that they have no property tax base and, hence, no bonding capacity. Members noted that an additional issue of continuing concern relates to the effect of direct appropriations upon the charter school's local school district both in terms of the district having to come up with the required match and, as well, having to absorb the statutorily required offset.

Dr. Lamberson stressed the importance of examining issues related to raising capital outlay funds for charter schools without penalizing the respective local districts and providing a secure, pledged revenue stream against which charter schools could bond. In response to the discussion and members' questions, Paul Cassidy of RBC Dain Rauscher (who serves as bond adviser to a number of New Mexico public school districts and municipal and county governments) stated that a revenue stream of approximately \$12.5 million per year would be needed to service a bond debt of \$175 million, which charter school representatives and others have tentatively identified as the amount of capital outlay funding that charter schools would need. Members discussed other sources of funding, including the New Mexico Finance Authority and the Public School Buildings Act (also called "HB 33").

Subcommittee members also discussed the effect of voter approval of Constitutional Amendment #2, which is on today's general election ballot. Voter approval of CA #2 would allow the state and school districts to enter into lease-purchase agreements when there is no obligation to continue the lease from year to year or to purchase the leased property and when the lease can be terminated if there are insufficient funds to meet current lease payments. Members agreed that

approval of this amendment would provide a significant mechanism for charter schools to use to meet capital outlay needs, especially considering the current statutory requirement that all charter schools be in public buildings by 2010. Some members and guests indicated a desire to amend that statute to extend the deadline to 2015.

Bill Draft Discussions

Ms. Maison and Ms. Tackett presented several discussion drafts of bills to address issues raised by the subcommittee at its September 11 meeting.

- 163845: This discussion draft would require districts to include any charter schools located in the district in any Public School Capital Improvements Act (SB 9) levy that goes before the voters and to distribute the proceeds based upon the charter school's fortieth-day membership. The bill would also require that the county treasurer distribute the proceeds directly to the charter school rather than have the funding go through the district.
- 163846: This bill would require districts to include their charter schools in any Public School Buildings Act (HB 33) levy submitted to voters for their approval and also would require a direct distribution to the charter school.
- 163847: This discussion draft would provide for voters to approve an additional mill to be levied for the Public School Capital Outlay Act two-mill levy. The proposal would require the additional mill to be shared among all public schools in the district, including charter schools, based on the fortieth-day membership of each school.
- 163917: This bill would require districts to include charter schools in any bond issue if the charter school is ranked in the top 10 to 15 priorities in the facility assessment database and the costs are within the bonding capacity of the district.
- 163923: This bill would provide for an annual adjustment of the \$600 per student amount of funding for leased facilities based on the consumer price index.

Subcommittee members discussed the relative merits of each of the drafts of legislation, as well as their concerns. Several members expressed particular concerns about the importance of providing a bondable revenue stream that charter schools could access that would not take funding from revenue streams already established for school districts.

Subcommittee members agreed by consensus to request that additional bills be drafted for discussion at the December meeting (assuming the Legislative Council approves an additional meeting for the subcommittee). Members agreed to consider legislation that would accomplish the following:

- remove the offset requirement for appropriations to state-chartered charter schools;
- allow for aggregation of SB 9 funding for state-chartered charter schools;
- provide a revenue stream for charter schools to pay off bonds issued for the local match for their respective school capital outlay projects;

- allow lease payments and the maximum of other statutorily established payments to rise with inflation;
- extend the deadline for charter schools to be in public buildings to 2015;
- allow for an extra mill under SB 9 for charter schools and allow for distribution directly from the county treasurer;
- require districts to consider the needs of charter schools when adopting a resolution for general obligation bonds;
- increase the state guarantee for SB 9 to \$70.00; and
- if CA #2 is approved by voters, draft enabling legislation to accomplish its implementation.

There being no further business to come before the subcommittee, the meeting adjourned at 3:40 p.m.

Revised: December 19, 2006

**TENTATIVE AGENDA
for the
THIRD MEETING
of the
PUBLIC SCHOOL CAPITAL OUTLAY OVERSIGHT TASK FORCE
CHARTER SCHOOL SUBCOMMITTEE**

**December 21, 2006
Room 307, State Capitol
Santa Fe**

Thursday, December 21

- 9:00 a.m. **Welcome and Call to Order**
- 9:05 a.m. **Approval of Minutes, September 11, 2006 Meeting**
- 9:10 a.m. **Update on Planning Assistance for Charter Schools**
—Paula Tackett, Director, Legislative Council Service
- 9:30 a.m. **Update on Charter School Transportation Costs**
—Gilbert Perea, Assistant Secretary for Program Support and Student
Transportation, Public Education Department
- 10:15 a.m. **Consideration of Recommendations for Charter School Capital Outlay and
Transportation Legislation for Potential Task Force Endorsement**
—Subcommittee Members and Staff
- 12:00 noon **Adjourn**

**UNAPPROVED
MINUTES
of the
THIRD MEETING
of the
PUBLIC SCHOOL CAPITAL OUTLAY OVERSIGHT TASK FORCE
CHARTER SCHOOL SUBCOMMITTEE**

**December 21, 2006
State Capitol, Room 307
Santa Fe**

The third meeting of the Charter School Subcommittee of the Public School Capital Outlay Oversight Task Force (PSCOOTF) was called to order by Representative Rick Miera, co-chair, on December 21, 2006 at 9:15 a.m. in Room 307 at the State Capitol in Santa Fe.

Present

Rep. Rick Miera, Co-chair
Sen. Cynthia Nava, Co-chair
Robbie Heyman
Dr. Anna Lamberson
Rep. Larry A. Larrañaga
Sen. Carroll H. Leavell
Don Moya for Veronica Garcia
Bud Mulcock

Absent

Sen. Vernon D. Asbill
Sen. Leonard Tsosie

Other members of PSCOOTF attending:

Pancho Guardiola
Katherine Miller

Staff

Sharon Ball, Legislative Council Service (LCS)
Tim Berry, Public School Facilities Authority (PSFA)
Robert Gorrell, PSFA
Frances Maestas, Legislative Education Study Committee (LESC)
Roxanne Knight, LCS
Antonio Ortiz, Public Education Department (PED)
Pauline Rindone, LESC
Kurt Steinhaus, Governor's Office
Paula Tackett, LCS

Guests

The guest list is in the meeting file.

Copies of all handouts and written testimony are in the meeting file.

Approval of Minutes, November 7, 2006 Meeting

The subcommittee unanimously approved the minutes of the November 7 meeting of the charter school subcommittee.

Update on Planning Assistance for Charter Schools

Paula Tackett and Robert Gorrell explained that PSFA is issuing contracts to Architectural Research Consultants and Greer Stafford SJCF Architects to assess five charter school facilities each (for a total of 10). The contractors will collect, review and compare all data required for the PSFA facilities assessment database (FAD) in order to bring all charter school facilities up to an equitable level of health and safety, utilization and capacity for growth, as well as renewal of existing facilities and accommodation of educational programs as outlined in each charter school's respective charter. The contractors will physically inspect the facilities and then compare the results against the state's adequacy standards and the adequacy standards planning guidelines to ensure consistency with other, noncharter schools' data in the FAD.

The following charter schools will be assessed by Architectural Research Consultants: Twenty-first Century Charter School, South Valley Academy and Robert F. Kennedy Charter School, Albuquerque; Sidney Gutierrez Middle School, Roswell; and Cottonwood Valley Charter School, Socorro. Greer Stafford SJCF will assess the Public Academy for Performing Arts and Los Puentos Charter School, Albuquerque; Moreno Valley High School, Angel Fire; Red River Valley Charter School, Red River; and Monte del Sol Charter School, Santa Fe.

The New Mexico Legislative Council has approved \$50,000 for the two contracts. Mr. Gorrell stated that the contractors will begin work immediately and expect to have the data available for the 2007 legislative session.

Ms. Tackett explained that currently charter schools cannot go above the adequacy standards using state money. Since charter schools are limited in their ability to go above adequacy, it was asked if the studies would be proposing such things as "trades", in which charter schools could trade out to have smaller rooms in exchange for a larger dance room or gym. Mr. Gorrell noted that schools cannot trade across programs (e.g., trade a science room for a gym).

It was noted that probably four charter schools have been added (chartered) in the last 12 months and that the average charter school has 175 students. All charter schools must now be in compliance with the codes for educational occupancy. Charter schools are required to be compliant with the Public School Capital Outlay Council adequacy standards within the same time frame as school districts.

Update on Charter School Transportation Costs

Gilbert Perea, assistant secretary for program support and student transportation, PED, provided three spreadsheets to the subcommittee that contain data about transportation costs for all schools, including charter schools.

Mr. Perea explained that charter schools and their respective districts manage transportation costs differently. For example, he said the Santa Fe district retains the funding formula generated by its respective charter schools and provides transportation to the students. On the other hand, the Albuquerque district distributes the amount of funding generated by students in each charter school to the charter school itself as determined by the charter school's fortieth-day count. He indicated that contractors provide services to some Albuquerque charter schools while some charter school students use public transportation.

In response to subcommittee questions and discussion, Mr. Perea opined that state statute does not require charter schools within a specific district to use that district's contracted school transportation providers and that charter schools may establish their own, separate contractual relationships with contractors.

Mr. Perea noted that transportation funds generated by charter school students may not be sufficient to cover the school's actual costs since charter schools are unable to achieve the type of economies of scale that districts can. Directing subcommittee members' attention to the table titled "Charter School Transportation", he said that the legislature may need to provide separate contingency funding outside the formula for some charter schools. On the other hand, he speculated that, in the future, Albuquerque may be distributing more transportation funds to charter schools than they will actually need. In response to a subcommittee question about studying the matter, Mr. Perea said that the issue had been studied in depth in 1994 when the state transportation funding formula was completely revised. Dr. Lisa Grover, representing the New Mexico Coalition of Charter Schools, added that school districts may be in a better position to provide transportation to charter schools than each charter school can separately and by itself.

Dr. Lamberson pointed out that information provided to the subcommittee by the PED's Transportation Bureau represents a very limited sample of charter school transportation costs since it includes data for only four charter schools in Albuquerque and two in Santa Fe. Subcommittee members expressed concerns about proposing legislative changes to either the Charter Schools Act or the public school transportation funding formula without additional data to provide a broader picture of expected costs for charter school student transportation.

Representative Miera requested that Mr. Perea investigate further the issues related to the "per capita reimbursement" provisions of the school transportation statutes as they relate to charter school students and the requirements of SB 600, which was enacted by the 2006 legislature, and report to him.

Consideration of Recommendations for Charter School Capital Outlay and Transportation Legislation for Potential Task Force Endorsement

Ms. Tackett and Gary Carlson, LCS contract drafter, provided the subcommittee with the following discussion drafts of bills that were drafted in response to subcommittee requests and suggestions:

- 163846 provides that a portion of revenue derived from the imposition of the HB 33 mill levy be paid by the county treasurer directly to the eligible charter schools. The bill would also allow expenditure of HB 33 funds for project management and oversight as long as the amount does not exceed five percent of the proceeds of the levy.
- 163847 proposes to allow for the imposition of an additional mill in the SB 9 levy, which, if approved by voters, would be distributed to all schools in the district, including locally chartered and state-chartered charter schools.
- 163916 proposes to exempt certain direct appropriations, such as those made to state-chartered charter schools, from offset provisions of the Public School Capital Outlay Act.
- 163917 would require local school boards to consider the needs of charter schools (as reflected in the FAD) located within the school district.
- 163923 proposes: (1) to increase the amount of funding available to school districts and charter schools for leased classroom space each year by the amount of the increase in the consumer price index (CPI); (2) to increase the base amount from \$600 per student to \$700 per student beginning with FY 2008; and (3) to extend the time period during which the lease payment funds will be available to 2015.
- 164267 proposes to enact enabling language for implementation of Constitutional Amendment 2, which was approved by voters in the 2006 general election. CA 2 allows, under certain circumstances, agreements for the lease of school facilities with an option to purchase to qualify for Public School Capital Outlay Act grant assistance. The bill would also allow revenues generated through SB 9 or HB 33 levies to be used for lease-purchase payments and for the local match requirement under the Public School Capital Outlay Act.
- 164547 creates the "charter school bonding fund" and authorizes the issuance of revenue bonds at a maximum of \$20 million at any one time by the New Mexico Finance Authority to provide capital outlay funding for the match required from state-chartered charter schools required by the Public School Capital Outlay Act. The bill proposes four sources of money to pay off the bonds: (1) the proportionate state guarantee distribution under SB 9 that is attributable to the MEM in a state-chartered charter school; (2) the proportionate amount of local funding generated through voter approval of a SB 9 mill levy; (3) the proportionate amount of funding generated through the proposed extra mill in the SB 9 levy; and (4) any remaining amount of debt service needed from gross receipts tax revenue.
- 164548 proposes to increase the SB 9 guarantee to \$70.00 per mill per unit for FY 2008.

Subcommittee members agreed by consensus to recommend to the full task force the endorsement of the concepts within the bill discussion drafts and authorized Ms. Tackett and Mr. Carlson to make adjustments as necessary in response to subcommittee questions and concerns and to reorganize provisions of the discussion drafts to conform with task force requests for final endorsement.

There being no further business to come before the subcommittee, the meeting adjourned at 1:25 p.m.

Public Education Department
School Transportation Average Costs
(2005-2006 Expenditures)

Name	Buses	BUS MILES TRAVELED	Days of Operation	Average Bus Route Miles	Annual Operational Expenditure	Annual Average Bus Cost	Average Per mile Cost
ALAMOGORDO	39	407,960.0	175	59.8	\$ 1,155,578	\$29,630.22	\$ 2.83
ALBUQUERQUE	416	6,139,710.0	180	82.0	\$ 16,076,118	\$38,644.51	\$ 2.62
ANIMAS	8	126,255.0	150	105.2	\$ 285,264	\$35,657.96	\$ 2.26
ARTESIA	23	388,706.4	180	93.9	\$ 1,292,403	\$56,191.43	\$ 3.32
AZTEC	35	412,812.0	180	65.5	\$ 1,291,080	\$36,888.01	\$ 3.13
BELEN	47	594,116.0	180	70.2	\$ 1,667,590	\$35,480.64	\$ 2.81
BERNALILLO	36	441,250.0	181	67.7	\$ 1,220,878	\$33,913.28	\$ 2.77
BLOOMFIELD	32	419,161.2	176	74.4	\$ 1,279,585	\$39,987.03	\$ 3.05
CAPITAN	9	103,950.0	180	64.2	\$ 319,822	\$35,535.73	\$ 3.08
CARLSBAD	42	495,617.5	175	67.4	\$ 1,280,076	\$30,478.00	\$ 2.58
CARRIZOZO	4	77,537.6	172	112.7	\$ 81,707	\$20,426.80	\$ 1.05
CENTRAL CONS.	74	989,680.0	178	75.1	\$ 2,644,869	\$35,741.48	\$ 2.67
CHAMA	7	97,471.8	177	78.7	\$ 301,314	\$43,044.82	\$ 3.09
CIMARRON	6	125,655.0	150	139.6	\$ 274,981	\$45,830.23	\$ 2.19
CLAYTON	14	280,368.0	177	113.1	\$ 568,632	\$40,616.59	\$ 2.03
CLOUDCROFT	8	113,629.2	179	79.4	\$ 321,708	\$40,213.49	\$ 2.83
CLOVIS	33	416,204.8	176	71.7	\$ 1,090,475	\$33,044.70	\$ 2.62
COBRE CONS.	18	205,145.6	176	64.8	\$ 573,254	\$31,847.44	\$ 2.79
CORONA	4	97,088.4	149	162.9	\$ 261,702	\$65,425.56	\$ 2.70
CUBA	13	268,390.0	172	120.0	\$ 472,428	\$36,340.62	\$ 1.76
DEMING	37	483,883.3	173	75.6	\$ 1,366,816	\$36,940.98	\$ 2.82
DES MOINES	5	85,374.0	180	94.9	\$ 205,252	\$41,050.46	\$ 2.40
DEXTER	9	119,871.0	171	77.9	\$ 436,977	\$48,553.04	\$ 3.65
DORA	7	97,335.0	150	92.7	\$ 241,129	\$34,446.93	\$ 2.48
DULCE	3	21,978.0	180	40.7	\$ 174,558	\$58,186.12	\$ 7.94
ELIDA	5	83,925.0	150	111.9	\$ 223,717	\$44,743.38	\$ 2.67
ESPANOLA	53	741,062.0	172	81.3	\$ 1,895,850	\$35,770.75	\$ 2.56
ESTANCIA	11	154,818.0	180	78.2	\$ 432,422	\$39,311.12	\$ 2.79
EUNICE	4	44,256.6	179	61.8	\$ 185,409	\$46,352.35	\$ 4.19
FARMINGTON	66	883,242.0	180	74.3	\$ 2,362,593	\$35,796.86	\$ 2.67
FLOYD	3	40,002.0	177	75.3	\$ 103,781	\$34,593.67	\$ 2.59
FT. SUMNER	10	210,903.8	163	129.4	\$ 421,312	\$42,131.21	\$ 2.00
GADSDEN	104	1,911,322.8	176	104.4	\$ 4,600,510	\$44,235.67	\$ 2.41
GALLUP	148	3,560,616.0	180	133.7	\$ 4,825,671	\$32,605.89	\$ 1.36
GRADY	5	69,788.0	146	95.6	\$ 182,923	\$36,584.54	\$ 2.62
GRANTS	35	372,330.0	180	59.1	\$ 1,090,886	\$31,168.17	\$ 2.93
HAGERMAN	4	45,056.0	176	64.0	\$ 183,878	\$45,969.50	\$ 4.08
HATCH	14	123,874.4	172	51.4	\$ 665,678	\$47,548.41	\$ 5.37
HOBBS	36	585,882.0	180	90.4	\$ 1,720,112	\$47,780.88	\$ 2.94
HONDO	5	47,375.9	143	66.3	\$ 156,881	\$31,376.22	\$ 3.31
HOUSE	4	47,888.0	146	82.0	\$ 169,672	\$42,418.10	\$ 3.54
JAL	2	84,294.0	180	234.2	\$ 166,840	\$83,420.18	\$ 1.98
JEMEZ MOUNTAIN	14	213,220.3	163	93.4	\$ 455,131	\$32,509.39	\$ 2.13
JEMEZ VALLEY	10	96,948.0	180	53.9	\$ 368,417	\$36,841.70	\$ 3.80
LAKE ARTHUR	2	22,704.0	176	64.5	\$ 111,167	\$55,583.42	\$ 4.90
LAS CRUCES	136	2,169,006.4	176	90.6	\$ 4,535,111	\$33,346.41	\$ 2.09
LAS VEGAS EAST	20	232,218.0	180	64.5	\$ 557,739	\$27,886.93	\$ 2.40
LAS VEGAS WEST	26	311,220.0	180	66.5	\$ 961,348	\$36,974.92	\$ 3.09

Transportation funds are provided to the Charter School by the school district
Budgets are determined by the Charter School share of the funds generated by formula

Charter Schools within Albuquerque Public School

Name	Budget	Expenditure	diff.
SOUTHWEST SLC	\$ 56,367	\$ 17,532.00	38,835.00
APS CHARTER VO TEC	\$ 11,678.00	\$ 1,660.00	10,018.00
NUESTROS VALORES	\$ 10,319.00	\$ 10,113.00	206.00
SOUTH VALLEY CHAR	\$ 48,698.00	\$ 43,652.00	5,046.00
	\$ 127,062.00	\$ 72,957.00	54,105.00

Name	Buses	BUS MILES TRAVELED	Days of Operation	Average Bus Route Miles	Annual Operational Expenditure	Annual Average Bus Cost	Average Per mile Cost
ALBUQUERQUE	416	6,139,710.0	180	82.0	\$ 16,076,118	\$ 38,644.51	\$ 2.62
SOUTHWEST SLC	2	10643.0	163	32.6	\$ 17,532.00	\$ 8,766.00	\$ 1.65
APS CHARTER VO TEC	1	1540.0	70	22.0	\$ 1,660.00	\$ 1,660.00	\$ 1.08
NUESTROS VALORES	1	9000.0	180	50.0	\$ 10,113.00	\$ 10,113.00	\$ 1.12
SOUTH VALLEY CHAR	3	21840.0	168	43.3	\$ 43,652.00	\$ 14,550.67	\$ 2.00
	7	43,023.0		37.0	\$ 72,957.00	\$ 8,772.42	\$ 1.46
Percentage	1.68%	0.70%			0.45%	22.70%	55.83%

Routes are operated by contract services

Per Bus
Cost

Charter School	District	Transp. Students	Comments	Daily		Annual Cost
				Added Mileage	Cost	
Lacy Simms	Alamogordo	0				
Mosier Academy	Aztec	0				
Village Academy	Bernalillo	32	School located within regular route	0	\$ -	
Jefferson Montessori	Carlsbad	0	more than \$2,000 and they lost the money			
Moreno Valley	Cimarron	30		?		
Deming Cesar Chavez (no answer)	Deming	?		?	\$ -	
Garcia de los Ninos	Espanola	0				
Espanola Military	Espanola	242	most ride in morning	?		
Middle College	Gallup	0				
Lindrieth Heritage	Jemez Mtn.	10	School located within regular route	0	\$ -	
Wawatowa	Jemez Valley	45		?		
San Diego Riverside	Jemez Valley	50		?		
Alma Vista	Las Cruces	0				
La Academia Dolores Huerta	Las Cruces	120		?		
Bridge Academy	Las Vegas	0				
Rio Gallinas	Las Vegas	11		0	\$ -	
Roots and Wings	Questa	0				
Red River Valley	Questa	70		?		
Sidney Gutierrez	Roswell	0				
Monte del Sol	Sanat Fe	360	Shuttled by 4 buses	?		
Charter 37	Santa Fe	80	Shuttled by 4 buses in a.m. & 2 routes in p.m.	109	\$ 42,490.38	\$ 10,622.60
ATC	Santa Fe	90	Shuttled by 3 buses in a.m. & 3 routes in p.m.	71	\$ 27,677.22	\$ 9,225.74
Turquoise Trail	Santa Fe	225	original Public School set-up (conversion)	0	\$ -	
Albuquerque	Silver City	0				
Cottonwood Valley	Socorro	60		?		
Anansi	Taos	49	almost every child	?		
Taos Charter School	Taos	50		?		

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WORK GROUP
AGENDAS AND MINUTES

**TENTATIVE AGENDA
for the
FIRST MEETING
of the
PUBLIC SCHOOL CAPITAL OUTLAY OVERSIGHT TASK FORCE
WORK GROUP ON DEVELOPER FINANCING OF SCHOOLS**

**November 8, 2006
State Capitol, Room 315
Santa Fe**

Wednesday, November 8

- 1:30 p.m. Recap of Verde Group Proposal**
—Verde Group
- 2:00 p.m. Discussion of Proposed Statutory Language**
—Peter Mallery, Bob Gorrell and Paula Tackett
- 3:00 p.m. Directions to Staff**
- 3:30 p.m. Adjourn**

**SUMMARY
of the
FIRST MEETING
of the
PUBLIC SCHOOL CAPITAL OUTLAY OVERSIGHT TASK FORCE
WORK GROUP ON DEVELOPER FINANCING OF SCHOOLS**

**November 8, 2006
State Capitol, Room 315
Santa Fe**

The first meeting of the Public School Capital Outlay Oversight Task Force (PSCOOTF) Work Group on Developer Financing of Schools was called to order by Senator Cynthia Nava, co-chair, on November 8, 2006 at 1:15 p.m. in Room 315 of the State Capitol in Santa Fe.

Present

Sen. Cynthia Nava, Co-Chair
Sen. Vernon D. Asbill
Peter Mallery, Esq.
Bud Mulcock
Antonio Ortiz for Veronica Garcia
Tanya Scott, Esq.

Absent

Rep. Rick Miera, Co-Chair
Robbie Heyman

Staff

Paula Tackett, Legislative Council Service (LCS)
Sharon Ball, LCS
Roxanne Knight, LCS
Norton Francis, Legislative Finance Committee (LFC)
Tim Berry, Public School Facilities Authority (PSFA)
Bob Gorrell, PSFA

Guests

The guest list is attached to the meeting file.

Wednesday, November 8

Mr. Mallery, representing Verde Realty from El Paso, Texas, presented the latest version of language he is proposing to encourage private capital investment in the construction of schools. This proposal results from the anticipated need to build a school in Santa Teresa to accompany a subdivision. The language is needed to provide a mechanism for a school district to use public school capital outlay matching funds to purchase a school building that would be constructed AND OCCUPIED by the school district, but would not be owned by the school district.

Mr. Mallery believes that Public School Capital Outlay Council (PSCOC) rulemaking authority could address this language; however, others in the work group believe the change requires legislation to amend the Public School Capital Outlay Act. At the end of the meeting, Ms. Tackett indicated she will talk to the New Mexico Attorney General's Office about an opinion as to whether this needs a law or a rule.

Senator Asbill wondered what would be PSFA's role in the process outlined by Mr. Mallery. Mr. Francis inquired if the facility proposed by Verde Realty would be built with tax increment financing.

Mr. Gorrell noted that the PSCOC has the responsibility to prevent the unnecessary proliferation of space, and Senator Nava asked about the relationship, if any, to student capacity needs. She wondered if something similar to this proposal would also work for charter schools, assuming such a proposal is legal and could be implemented. Staff noted that charter schools are already entitled to certain start-up operational expenses.

Mr. Gorrell said that the school districts decide what the appropriate size of a school should be. He expressed concern about setting precedent with this proposal.

Senator Nava asked about the PSCOOTF omnibus bill. She suggested that too much charter school legislation could create problems for the passage of the remaining legislation. Ms. Tackett suggested that the proposals could be drafted in separate bills or combined in some versions. She said staff would work on the language for a law and bring it to the task force in December.

**TENTATIVE AGENDA
for the
FIRST MEETING
of the
PUBLIC SCHOOL CAPITAL OUTLAY OVERSIGHT TASK FORCE
WORK GROUP ON FUNDING ISSUE RELATED TO ADEQUACY**

**November 8, 2006
State Capitol, Room 315
Santa Fe**

Wednesday, November 8

- 9:00 a.m. **Opening Remarks**
 —Senator Cynthia Nava, Co-Chair
 —Representative Rick Miera, Co-Chair
- 9:15 a.m. **Recap of Issue before the Work Group**
 —Paula Tackett, Director, Legislative Council Service (LCS)
 —Bruce Boynton, Esq., Boynton Law Office
 —Robert F. Rosebrough, Esq., Jordan & Rosebrough, PC
 —Ron Van Amberg, Esq., Boynton Law Office
- 10:00 a.m. **Discussion of Options Vis a Vis Funding above Adequacy**
 —Paula Tackett, Director, LCS
 —Robert Gorrell, Director, Public School Facilities Authority
 —Other Members and Staff
- 12:00 noon **Adjourn**

**SUMMARY
for the
FIRST MEETING
of the
PUBLIC SCHOOL CAPITAL OUTLAY OVERSIGHT TASK FORCE
WORK GROUP ON FUNDING ISSUES RELATED TO ADEQUACY**

**November 8, 2006
State Capitol, Room 315
Santa Fe**

The first meeting of the Public School Capital Outlay Oversight Task Force Work Group on Funding Issues Related to Adequacy was called to order by Senator Cynthia Nava at 9:15 a.m. on November 8, 2006 in the State Capitol in Santa Fe.

Present

Sen. Cynthia Nava, Co-Chair
Sen. Vernon D. Asbill
Kip Bobroff, University of New Mexico
(via telephone)
Bruce Boynton, Esq., Grants-Cibola County
School District
Pancho Guardiola
Ernest Mackel, Zuni Representative
Bud Mulcock
Antonio Ortiz, Public Education Department
(PED) for Veronica Garcia
George Perea, Grants-Cibola County School
District
Robert Rosebrough, Esq., Gallup-McKinley
School District
Ron Van Amberg, Esq., Zuni Legal Counsel

Absent

Rep. Rick Miera, Co-Chair
Robbie Heyman
Anna Lamberson
John Samford, Gallup-McKinley School
District

Staff

Sharon Ball, Legislative Council Service (LCS)
Tim Berry, Public School Facilities Authority (PSFA)
Norton Francis, Legislative Finance Committee (LFC)
Robert Gorrell, PSFA
Roxanne Knight, LCS
Frances Maestas, Legislative Education Study Committee (LESC)
Paula Tackett, LCS

Guests:

The guest list is in the meeting file.

Wednesday, November 8

The work group discussions were opened by Senator Nava. She explained that some school districts will never be able to afford facilities that go above the basic adequacy standards and that this group has been brought together to discuss possible options to address this problem in the future. The Public School Capital Outlay Oversight Task Force (PSCOOTF) will receive recommendations from this group.

The attorneys involved in the *Zuni* lawsuit offered their concerns. Mr. Boynton wondered if the adequacy standards could be redefined. Mr. Van Amberg wondered what other revenue sources might be available to build facilities that are not on the current list to receive priority funding from the Public School Capital Outlay Council (PSCOC), particularly since there are limits to the bonding capacity of some school districts facing this issue. Also, he and Mr. Rosebrough asked if the Zuni, Gallup and Grants schools could build "outside the oversight of PSFA", since they have their own construction professionals and this could save money. They noted that growth factors are not being addressed for some of the schools.

Mr. Bobroff, who participated in the meeting via telephone, noted that there is a litigation risk at this time and that it is his opinion that the current system does not meet adequacy standards. He expressed concern that although considerable funding has gone into capital projects for schools, it has not necessarily gone to those areas of concern to the lawyers. He said the Zuni, Grants, Gallup and Gadsden schools are still struggling. He inquired if subdivision growth had been given a higher priority over adequacy standards. He suggested that every New Mexico child have at least a "median" level of resources for school facilities.

Mr. Gorrell stated that "opting out" of the PSFA and the PSCOC review would not save anyone any money. In fact, he pointed out that litigation on the construction projects has dropped to zero, thus saving millions of dollars. He noted that increasing construction costs are being reviewed, but he said that often the architects tend to drive the costs.

Ms. Tackett gave a brief history on the adequacy standards and capital outlay for schools. She said growth is a part of the ranking process for projects, and she noted that school districts may appeal the rankings. At times, the rankings have been changed after the appeals. She noted that an additional \$100 million for growth schools was funded separately from the established revenue stream.

Mr. Van Amberg said a process is needed to motivate districts universally to increase the adequacy standards, with an option to address specific school needs and go above adequacy. Ms. Tackett noted that the PSCOC does not concur with Mr. Van Amberg's position, but feels that the court adopted "adequacy" as the standard, and the existing standards do meet adequacy. Contained in the standards is a reference that there will be a regular review process of these standards to keep them current.

Ms. Tackett presented the following six very preliminary options proposed by staff for the work group to discuss.

1. If educational/community spaces (e.g., senior centers, performing arts centers and daycare centers) were to be used jointly by schools and the community, then they would be exempt from the "offset" provisions normally applied. Also, these spaces might result in the schools going above adequacy or be unrelated to adequacy, yet not result in penalizing the school via an offset. It is uncertain if this option would be compliant with the *Zuni* lawsuit and the terminology would need to be defined in the standards, separate from the core curriculum.
2. Including a mechanism to allow districts whose local share is 15 percent to 20 percent or less to receive up to or an additional 25 percent to go above adequacy. This would allow those with lower tax bases to go to a certain percentage above adequacy.
3. Considering a different offset if legislators give funding to school projects that are in the top 150-200 of the NMCI ranking.
4. Taking a percentage of legislative capital appropriations for each school and putting it into a fund for those schools that cannot go above adequacy, specifically, those schools at 20 or 25 percent local share.
5. Providing a reduced offset for the next two years for reauthorization of capital appropriations that would be designated for the school district in which the original appropriation was made.
6. Allowing districts that have demonstrated an above-average maintenance program that sustains its facilities to have a reduced local share.

Mr. Gorrell explained the "utilization" concept, and Senator Nava suggested that electives should be part of the utilization. Mr. Perea agreed with Senator Nava.

With regard to Option 5, Mr. Mulcock suggested that a legislator be allowed only one reauthorization and that any unexpended funds for projects be subsequently reauthorized to be placed in a "pot" for other school districts to use.

Mr. Bobroff expressed concern that resources not be dictated by political power, and that the state ensure "uniform access to resources". He stated that in order to have a constitutional system of funding, it is necessary to have a revenue stream for schools to reach adequacy, and then a way for schools that do not have a wealthy tax base to address other needs. He asked for copies of the options, so he could be sure he understands what is being presented to the work group. With regard to Option 2, Mr. Rosebrough recommended a graduated cut line starting at 30 percent and going down from there. Mr. Boynton said there needs to be more funding and a process to get that funding to the schools.

Mr. Mulcock expressed a concern that all options except for number one appear to be changing the accepted standard of the original task force: a uniform system based on adequacy. The proposals suggest distribution of funding outside the system of adequacy.

Staff commented that the options in no way should be interpreted as varying from the accepted adequacy standard, but a recognition under the existing system of the differences among the districts and a desire to provide additional funding for the students of those districts unable to go above adequacy, although not wavering in the belief that adequacy is the standard adopted by the court.

There was considerable discussion about the various options. The issue of "teacherages" was raised by Mr. Mackel. He said that although teacherages are in the standards, they are not funded.

Mr. Boynton suggested his preference to reallocate money rather than trying to find a new revenue stream to address the problems. Mr. Perea suggested that funding for the first year could be more immediate, but that a permanent funding source is needed.

Directions to staff included: drafting all options, looking at funding sources for the teacherages and possibly creating a separate fund for them, reviewing Mr. Boynton's concern about athletic facility concerns (e.g., no athletic facilities for certain sports) and looking at doing a snapshot or catch-up process for performing arts spaces (similar to what was done with deficiencies).

Ms. Tackett said she would clean up the options and email them to everyone.

The work group adjourned at 12:00 noon.

**TENTATIVE AGENDA
for the
SECOND MEETING
of the
PUBLIC SCHOOL CAPITAL OUTLAY OVERSIGHT TASK FORCE
WORKGROUP ON FUNDING ISSUE RELATED TO ADEQUACY**

**December 15, 2006
State Capitol, Room 315
Santa Fe**

Friday, December 15

1:00 p.m.

Opening Remarks

Senator Cynthia Nava, Co-chair

Representative Rick Miera, Co-chair

Review Draft Legislation

Other Business

**MINUTES
of the
SECOND MEETING
of the
PUBLIC SCHOOL CAPITAL OUTLAY OVERSIGHT TASK FORCE
WORK GROUP ON FUNDING ISSUE RELATED TO ADEQUACY**

**November 15, 2006
State Capitol, Room 315
Santa Fe**

The first meeting of the Public School Capital Outlay Oversight Task Force Work Group on Funding Issue Related to Adequacy was called to order by Senator Cynthia Nava and Representative Rick Miera, co-chairs, at 1:00 p.m. on November 15, 2006 in the State Capitol in Santa Fe.

Present

Sen. Cynthia Nava, Co-Chair
Rep. Rick Miera, Co-Chair
Bruce Boynton, Esq., Grants-Cibola County
Schools
Anna Lamberson
Ernest Mackel, Zuni Representative
Bud Mulcock
Don Moya, Public Education Department
(PED) for Veronica Garcia
George Perea, Grants-Cibola School District
John Samford, Gallup School District
Ron Van Amber, Esq., Zuni Legal Counsel

Absent

Sen. Vernon D. Asbill
Pancho Guardiola
Robbie Heyman
Robert Rosebrough, Esq., Gallup-McKinley
School District

Staff

Tim Berry, Public School Facilities Authority (PSFA)
Norton Francis, Legislative Finance Committee (LFC)
Robert Gorrell, PSFA
Roxanne Knight, Legislative Council Service (LCS)
Frances Maestas, Legislative Education Study Committee (LESC)
Antonio Ortiz, PED
Paula Tackett, LCS

Guests

The guest list is in the meeting file.

Wednesday, November 15

The work group discussions were opened by Senator Cynthia Nava and Representative Rick Miera, co-chairs.

The work group immediately began review of draft legislation. Ms. Tackett reviewed the following draft proposals for legislation:

202.164272.3 — Creates a fund and establishes criteria for the Public School Capital Outlay Council (PSCOC) to use in funding poorer districts to go above adequacy. It sets aside two percent of all future direct appropriations for schools and transfers the amount to the fund.

202.164271.2 — Creates the same fund and criteria as above. Funds the program with unexpended money from the last three capital bills that would otherwise revert to either the severance tax bonding fund (STB) or the general fund. Also amends last year's bill to transfer any unused STB authorization to the PSCOC to use for the program.

202.164274.2 — Gives up 25 percent more of the project cost to the poorer districts so that the project may exceed the statewide adequacy standards.

202.164273.1 — Provides a 50 percent reduction in the offset for direct appropriations for projects that are ranked in the top 150 school projects statewide. Also applies to reauthorizations to previous appropriations to a project ranked in the top 150.

202.164275.1 — Provides a reduced offset for direct appropriations for projects that are for both educational and community uses.

Staff was directed to make several changes to the first three bill proposals and to present the recommendations to the full task force.

The work group adjourned at 4:00 p.m.

SUBCOMMITTEE ON LEGISLATION

AGENDA AND MINUTES

**TENTATIVE AGENDA
for the
FIRST MEETING
of the
PUBLIC SCHOOL CAPITAL OUTLAY OVERSIGHT TASK FORCE
SUBCOMMITTEE ON LEGISLATION**

**January 14, 2007
Room 326, State Capitol
Santa Fe**

Sunday, January 14

4:00 p.m. **Call to Order**

 Review of Legislation

 Adjourn

**UNAPPROVED MINUTES
for the
FIRST MEETING
of the
PUBLIC SCHOOL CAPITAL OUTLAY OVERSIGHT TASK FORCE
SUBCOMMITTEE ON LEGISLATION**

**January 14, 2007
State Capitol, Room 326
Santa Fe**

The first meeting of the Subcommittee on Legislation of the Public School Capital Outlay Oversight Task Force (PSCOOTF) was called to order by Representative Rick Miera, co-chair, on January 14, 2007 at approximately 4:15 p.m. in Room 326 of the State Capitol in Santa Fe.

Present

Rep. Rick Miera, Co-Chair
Sen. Ben D. Altamirano
Sen. Vernon D. Asbill
Sen. Carroll H. Leavell
Katherine B. Miller, Department of Finance
and Administration (DFA)
Don Moya for Veronica Garcia, Public
Education Department (PED)
Bud Mulcock
Rep. Henry Kiki Saavedra

Absent

Sen. Cynthia Nava, Co-Chair
Rep. Larry A. Larrañaga
Pancho Guardiola
Robbie Heyman
Dr. Anna Lamberson

Staff

Sharon Ball, Legislative Council Service (LCS)
Gary Carlson, LCS
Roxanne Knight, LCS
Frances Maestas, Legislative Education Study Committee (LESC)
Pauline Rindone LESC
Paula Tackett, LCS

Guests

The guest list is in the meeting file.

Sunday, January 14

Copies of the draft legislation are in the meeting file.

Review of Legislation

The subcommittee members reviewed discussion drafts of legislation prepared by staff per discussions at the December 22, 2006 PSCOOTF meeting and proposed for PSCOOTF endorsement:

- 164727.2, the omnibus PSCOOTF bill: Staff was directed to check the bill's title and rearrange as needed to improve the bill. Representative Miera expressed some concerns about schools exceeding adequacy standards, but Ms. Tackett explained that the schools have to demonstrate utilization in order to do so. Senator Altamirano requested a review of the fiscal impact of the bill and would like that information provided as soon as it is available.
- 164549.2, the public school facility opportunity fund bill: Approved as drafted.
- 164726.1, the appropriations bill for educational technology deficiencies, roof repair and replacement, portable facilities and deficiencies at New Mexico school for the blind and visually impaired and the New Mexico school for the deaf: Approved as drafted.
- 164266.1, construction manager at risk: Adopted in concept, but staff is to change the title and short title and consult with the Public School Facilities Authority before finalizing.
- 164547.2, state-chartered charter schools capital funding bill: Staff suggested this could be done as a bill for \$10 million from the general fund, which would be deposited into a new fund, rather than issuing charter schools bonds that would be backed by gross receipts tax revenue.
- 163917.4, school district general obligation bonds: Approved as drafted.

Secretary Miller mentioned that she had recommended to the governor that he support a general fund appropriation of \$20 million to fund improvements in charter school facilities.

On a motion by Senator Altamirano, seconded by Senator Leavell, the subcommittee agreed unanimously to move the bills forward with changes being made as directed to Ms. Tackett and staff. The subcommittee agreed by consensus that, in making the changes, staff could consult with the task force co-chairs as necessary.

The meeting was adjourned at 6:00 p.m.

Appendix F

PUBLIC SCHOOL CAPITAL OUTLAY OVERSIGHT TASK FORCE

ENDORSED LEGISLATION

underscored material = new
[bracketed material] = delete

SENATE BILL

48TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2007

INTRODUCED BY

FOR THE PUBLIC SCHOOL CAPITAL OUTLAY OVERSIGHT TASK FORCE

AN ACT

RELATING TO PUBLIC SCHOOL FACILITIES; PROVIDING THAT CERTAIN
SCHOOL CONSTRUCTION PROJECTS MAY BE EXEMPTED FROM SOME STATE
OVERSIGHT; AMENDING THE PUBLIC SCHOOL CAPITAL OUTLAY ACT TO
CHANGE THE CRITERIA FOR OFFSETTING AMOUNTS FROM STATE GRANTS,
TO REQUIRE SPACE UTILIZATION TO BE CONSIDERED, TO ALLOW
ADDITIONAL GRANTS TO CERTAIN SCHOOL DISTRICTS, TO INCREASE
GRANTS TO SCHOOLS FOR LEASE PAYMENTS, TO ALLOW CERTAIN
FACILITIES TO BE PURCHASED WITH STATE GRANTS AND TO EXTEND THE
TIME FOR WHICH CERTAIN EXPENDITURES MAY BE MADE; AMENDING THE
PUBLIC SCHOOL CAPITAL IMPROVEMENTS ACT TO AUTHORIZE THE
IMPOSITION OF AN ADDITIONAL MILL AND TO INCREASE THE STATE
DISTRIBUTION; AMENDING THE PUBLIC SCHOOL BUILDINGS ACT TO ALLOW
REVENUE TO BE USED FOR PROJECT MANAGEMENT, TO INCREASE THE
PERIOD FOR WHICH A TAX MAY BE IMPOSED AND TO AUTHORIZE DIRECT
PAYMENT OF REVENUE TO CHARTER SCHOOLS; ALLOWING CHARTER SCHOOLS

.164727.3

1 AND SCHOOL DISTRICTS TO ENTER INTO LEASE AGREEMENTS; ALLOWING
2 CERTAIN TYPES OF LEASE-PURCHASE ARRANGEMENTS TO BE FUNDED WITH
3 CERTAIN STATE GRANTS AND CERTAIN TAX REVENUES; RECOMPILING A
4 CERTAIN SECTION OF THE PUBLIC SCHOOL CODE; RECONCILING MULTIPLE
5 AMENDMENTS TO THE SAME SECTION OF LAW IN LAWS 2006; MAKING
6 APPROPRIATIONS.

7
8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

9 Section 1. Section 22-20-1 NMSA 1978 (being Laws 1967,
10 Chapter 16, Section 270, as amended by Laws 2006, Chapter 94,
11 Section 54 and by Laws 2006, Chapter 95, Section 1) is amended
12 to read:

13 "22-20-1. SCHOOL CONSTRUCTION--APPROVAL OF THE PUBLIC
14 SCHOOL FACILITIES AUTHORITY--COMPLIANCE WITH STATEWIDE ADEQUACY
15 STANDARDS--STATE CONSTRUCTION AND FIRE STANDARDS APPLICABLE.--

16 A. Except as provided in Subsection D of this
17 section, each local school board or governing body of a charter
18 school shall secure the approval of the director of the public
19 school facilities authority or the director's designee prior to
20 the construction or letting of contracts for construction of
21 any school building or related school structure or before
22 reopening an existing structure that was formerly used as a
23 school building but that has not been used for that purpose
24 during the previous year. A written application shall be
25 submitted to the director requesting approval of the

.164727.3

1 construction, and, upon receipt, the director shall forward a
2 copy of the application to the secretary. The director shall
3 prescribe the form of the application, which shall include the
4 following:

- 5 (1) a statement of need;
- 6 (2) the anticipated number of students
7 affected by the construction;
- 8 (3) the estimated cost;
- 9 (4) a description of the proposed construction
10 project;
- 11 (5) a map of the area showing existing school
12 attendance centers within a five-mile radius and any
13 obstructions to attending the attendance centers, such as
14 railroad tracks, rivers and limited-access highways; and
15 (6) ~~[such]~~ other information as may be
16 required by the director.

17 B. The director or the director's designee shall
18 give approval to an application if the director or designee
19 reasonably determines that:

- 20 (1) the construction will not cause an
21 unnecessary proliferation of school construction;
- 22 (2) the construction is needed in the school
23 district or by the charter school;
- 24 (3) the construction is feasible;
- 25 (4) the cost of the construction is

1 reasonable;

2 (5) the school district or charter school has
3 submitted a five-year facilities plan that includes:

4 (a) enrollment projections;

5 (b) a current preventive maintenance
6 plan;

7 (c) the capital needs of charter schools
8 ~~[located in]~~ chartered by the school district, if applicable,
9 or the capital needs of the charter school if it is state-
10 chartered; and

11 (d) projections for the facilities
12 needed in order to maintain a full-day kindergarten program;

13 (6) the construction project:

14 (a) is in compliance with the statewide
15 adequacy standards adopted pursuant to the Public School
16 Capital Outlay Act; and

17 (b) is appropriately integrated into the
18 school district or charter school five-year facilities plan;

19 (7) the school district or charter school is
20 financially able to pay for the construction; and

21 (8) the secretary has certified that the
22 construction will support the educational program of the school
23 district or charter school.

24 C. Within thirty days after the receipt of an
25 application filed pursuant to this section, the director or the

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1 director's designee shall in writing notify the local school
2 board or governing body of a charter school making the
3 application and the department of approval or disapproval of
4 the application.

5 D. By rule, the public school capital outlay
6 council may:

7 (1) exempt classes or types of construction
8 from the application and approval requirements of this section;
9 or

10 (2) exempt classes or types of construction
11 from the requirement of approval but, if the council determines
12 that information concerning the construction is necessary for
13 the maintenance of the facilities assessment database, require
14 a description of the proposed construction project and related
15 information to be submitted to the public school facilities
16 authority.

17 ~~[D.]~~ E. A local school board or governing body of a
18 charter school shall not enter into a contract for the
19 construction of a public school facility, including contracts
20 funded with insurance proceeds, unless the contract contains
21 provisions requiring the construction to be in compliance with
22 the statewide adequacy standards adopted pursuant to the Public
23 School Capital Outlay Act, provided that, for a contract funded
24 in whole or in part with insurance proceeds:

25 (1) the cost of settlement of any insurance

1 claim shall not be increased by inclusion of the insurance
2 proceeds in the construction contract; and

3 (2) insurance claims settlements shall
4 continue to be governed by insurance policies, memoranda of
5 coverage and rules related to them.

6 ~~[E.]~~ F. Public school facilities shall be
7 constructed pursuant to state standards or codes promulgated
8 pursuant to the Construction Industries Licensing Act and rules
9 adopted pursuant to Section 59A-52-15 NMSA 1978 for the
10 prevention and control of fires in public occupancies.
11 Building standards or codes adopted by a municipality or county
12 do not apply to the construction of public school facilities,
13 except those structures constructed as a part of an educational
14 program of a school district or charter school.

15 ~~[F.]~~ G. The provisions of Subsection ~~[E]~~ F of this
16 section relating to fire protection shall not be effective
17 until the public regulation commission has adopted the
18 International Fire Code and all standards related to that code.

19 ~~[G.]~~ H. As used in this section, "construction"
20 means any project for which the construction industries
21 division of the regulation and licensing department requires
22 permitting and for which the estimated total cost exceeds two
23 hundred thousand dollars (\$200,000)."

24 Section 2. Section 22-24-4 NMSA 1978 (being Laws 1975,
25 Chapter 235, Section 4, as amended) is amended to read:

1 "22-24-4. PUBLIC SCHOOL CAPITAL OUTLAY FUND CREATED--
2 USE.--

3 A. [~~There is created~~] The "public school capital
4 outlay fund" is created. Balances remaining in the fund at the
5 end of each fiscal year shall not revert.

6 B. Except as provided in Section 22-24-5.8 NMSA
7 1978 and in Subsections G through L of this section, money in
8 the fund may be used only for capital expenditures deemed by
9 the council necessary for an adequate educational program.

10 C. The council may authorize the purchase by the
11 public school facilities authority of portable classrooms to be
12 loaned to school districts to meet a temporary requirement.
13 Payment for these purchases shall be made from the fund. Title
14 and custody to the portable classrooms shall rest in the public
15 school facilities authority. The council shall authorize the
16 lending of the portable classrooms to school districts upon
17 request and upon finding that sufficient need exists.

18 Application for use or return of state-owned portable classroom
19 buildings shall be submitted by school districts to the
20 council. Expenses of maintenance of the portable classrooms
21 while in the custody of the public school facilities authority
22 shall be paid from the fund; expenses of maintenance and
23 insurance of the portable classrooms while in the custody of a
24 school district shall be the responsibility of the school
25 district. The council may authorize the permanent disposition

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1 of the portable classrooms by the public school facilities
2 authority with prior approval of the state board of finance.

3 D. Applications for assistance from the fund shall
4 be made by school districts to the council in accordance with
5 requirements of the council. Except as provided in Subsection
6 K of this section, the council shall require as a condition of
7 application that a school district have a current five-year
8 facilities plan, which shall include a current preventive
9 maintenance plan to which the school adheres for each public
10 school in the school district.

11 E. The council shall review all requests for
12 assistance from the fund and shall allocate funds only for
13 those capital outlay projects that meet the criteria of the
14 Public School Capital Outlay Act.

15 F. Money in the fund shall be disbursed by warrant
16 of the department of finance and administration on vouchers
17 signed by the secretary of finance and administration following
18 certification by the council that an application has been
19 approved or an expenditure has been ordered by a court pursuant
20 to Section 22-24-5.4 NMSA 1978. At the discretion of the
21 council, money for a project shall be distributed as follows:

22 (1) up to ten percent of the portion of the
23 project cost funded with distributions from the fund or five
24 percent of the total project cost, whichever is greater, may be
25 paid to the school district before work commences with the

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1 balance of the grant award made on a cost-reimbursement basis;
2 or

3 (2) the council may authorize payments
4 directly to the contractor.

5 G. Balances in the fund may be annually
6 appropriated for the core administrative functions of the
7 public school facilities authority pursuant to the Public
8 School Capital Outlay Act and, in addition, balances in the
9 fund may be expended by the public school facilities authority,
10 upon approval of the council, for project management expenses;
11 provided that:

12 (1) the total annual expenditures from the
13 fund pursuant to this subsection shall not exceed five percent
14 of the average annual grant assistance authorized from the fund
15 during the three previous fiscal years; and

16 (2) any unexpended or unencumbered balance
17 remaining at the end of a fiscal year from the expenditures
18 authorized in this subsection shall revert to the fund.

19 H. Up to thirty million dollars (\$30,000,000) of
20 the fund may be allocated annually by the council in fiscal
21 years 2006 and 2007 for a roof repair and replacement
22 initiative with projects to be identified by the council
23 pursuant to Section 22-24-4.3 NMSA 1978; provided that all
24 money allocated pursuant to this subsection shall be expended
25 prior to September 1, 2008.

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1 I. ~~[Up to seven million five hundred thousand~~
2 ~~dollars (\$7,500,000) from]~~ The fund may be expended annually by
3 the council in fiscal years 2006 through ~~[2010]~~ 2020 for grants
4 to school districts for the purpose of making lease payments
5 for classroom facilities, including facilities leased by
6 charter schools. The grants shall be made upon application by
7 the school districts and pursuant to rules adopted by the
8 council; provided that an application on behalf of a charter
9 school shall be made by the school district but, if the school
10 district fails to make an application on behalf of a charter
11 school, the charter school may submit its own application. The
12 following criteria shall apply to the grants:

13 (1) the amount of a grant to a school district
14 shall not exceed:

15 (a) the actual annual lease payments
16 owed for leasing classroom space for schools, including charter
17 schools, in the district; or

18 (b) ~~[six hundred dollars (\$600)]~~ seven
19 hundred dollars (\$700) multiplied by the number of MEM using
20 the leased classroom facilities; provided that in fiscal year
21 2009 and in each subsequent fiscal year, this amount shall be
22 adjusted by the percentage increase between the penultimate
23 calendar year and the immediately preceding calendar year of
24 the consumer price index for the United States, all items, as
25 published by the United States department of labor; and

1 provided further that if the total grants awarded pursuant to
2 this paragraph would exceed the total annual amount available,
3 the rate specified in this subparagraph shall be reduced
4 proportionately;

5 (2) a grant received for the lease payments of
6 a charter school may be used by that charter school as a state
7 match necessary to obtain federal grants pursuant to the
8 federal No Child Left Behind Act of 2001;

9 (3) at the end of each fiscal year, any
10 unexpended or unencumbered balance of the appropriation shall
11 revert to the fund; ~~and~~

12 (4) if the lease payments are made pursuant to
13 a financing agreement under which the facilities may be
14 purchased for a price that is reduced according to the lease
15 payments made:

16 (a) a grant shall not be made unless the
17 council determines that the leased facilities meet the
18 statewide adequacy standards; and

19 (b) neither a grant nor any provision of
20 the Public School Capital Outlay Act creates a legal obligation
21 for the school district or charter school to continue the lease
22 from year to year or to purchase the facilities nor does it
23 create a legal obligation for the state to make subsequent
24 grants pursuant to the provisions of this subsection; and

25 (5) the total amount expended from the fund

1 pursuant to this subsection shall not exceed:

2 (a) seven million five hundred thousand
3 dollars (\$7,500,000) in fiscal year 2007; and

4 (b) in fiscal year 2008 and each
5 subsequent fiscal year, the maximum amount for the previous
6 fiscal year adjusted by the percentage increase between the
7 penultimate calendar year and the immediately preceding
8 calendar year of the consumer price index for the United
9 States, all items, as published by the United States department
10 of labor; and

11 [~~(4)~~] (6) as used in this subsection:

12 (a) "MEM" means: [~~(a)~~] 1) the average
13 full-time-equivalent enrollment using leased classroom
14 facilities on the eightieth and one hundred twentieth days of
15 the prior school year; or [~~(b)~~] 2) in the case of an approved
16 charter school that has not commenced classroom instruction,
17 the estimated full-time-equivalent enrollment that will use
18 leased classroom facilities in the first year of instruction,
19 as shown in the approved charter school application; provided
20 that, after the eightieth day of the school year, the MEM shall
21 be adjusted to reflect the full-time-equivalent enrollment on
22 that date; and

23 (b) "classroom facilities" or "classroom
24 space" includes the space needed, as determined by the minimum
25 required under the statewide adequacy standards, for the direct

1 administration of school activities.

2 J. In addition to other authorized expenditures
3 from the fund, up to one percent of the average grant
4 assistance authorized from the fund during the three previous
5 fiscal years may be expended in each fiscal year by the public
6 school facilities authority to reimburse the state fire
7 marshal, the construction industries division of the regulation
8 and licensing department and local jurisdictions having
9 authority from the state to permit and inspect projects for
10 expenditures made to permit and inspect projects funded in
11 whole or in part under the Public School Capital Outlay Act.
12 The authority shall enter into contracts with the state fire
13 marshal, the construction industries division or the
14 appropriate local authorities to carry out the provisions of
15 this subsection.

16 K. Pursuant to guidelines established by the
17 council, allocations from the fund may be made to assist school
18 districts in developing and updating five-year facilities plans
19 required by the Public School Capital Outlay Act; provided
20 that:

21 (1) no allocation shall be made unless the
22 council determines that the school district is willing and able
23 to pay the portion of the total cost of developing or updating
24 the plan that is not funded with the allocation from the fund.
25 Except as provided in Paragraph (2) of this subsection, the

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1 portion of the total cost to be paid with the allocation from
2 the fund shall be determined pursuant to the methodology in
3 Paragraph (5) of Subsection B of Section 22-24-5 NMSA 1978; or

4 (2) the allocation from the fund may be used
5 to pay the total cost of developing or updating the plan if:

6 (a) the school district has fewer than
7 an average of six hundred full-time-equivalent students on the
8 eightieth and one hundred twentieth days of the prior school
9 year; or

10 (b) the school district meets all of the
11 following requirements: 1) the school district has fewer than
12 an average of one thousand full-time-equivalent students on the
13 eightieth and one hundred twentieth days of the prior school
14 year; 2) the school district has at least seventy percent of
15 its students eligible for free or reduced-fee lunch; 3) the
16 state share of the total cost, if calculated pursuant to the
17 methodology in Paragraph (5) of Subsection B of Section 22-24-5
18 NMSA 1978, would be less than fifty percent; and 4) for all
19 educational purposes, the school district has a residential
20 property tax rate of at least seven dollars (\$7.00) on each one
21 thousand dollars (\$1,000) of taxable value, as measured by the
22 sum of all rates imposed by resolution of the local school
23 board plus rates set to pay interest and principal on
24 outstanding school district general obligation bonds.

25 L. Upon application by a school district,

1 allocations from the fund may be made by the council for the
2 purpose of demolishing abandoned school district facilities,
3 provided that:

4 (1) the costs of continuing to insure an
5 abandoned facility outweigh any potential benefit when and if a
6 new facility is needed by the school district;

7 (2) there is no practical use for the
8 abandoned facility without the expenditure of substantial
9 renovation costs; and

10 (3) the council may enter into an agreement
11 with the school district under which an amount equal to the
12 savings to the district in lower insurance premiums are used to
13 fully or partially reimburse the fund for the demolition costs
14 allocated to the district."

15 Section 3. Section 22-24-4.1 NMSA 1978 (being Laws 2001,
16 Chapter 338, Section 6, as amended) is amended to read:

17 "22-24-4.1. OUTSTANDING DEFICIENCIES--ASSESSMENT--
18 CORRECTION.--

19 A. No later than September 1, 2001, the council
20 shall define and develop guidelines, consistent with the codes
21 adopted by the construction industries commission pursuant to
22 the Construction Industries Licensing Act, for school districts
23 to use to identify outstanding serious deficiencies in public
24 school buildings and grounds, including buildings and grounds
25 of charter schools, that may adversely affect the health or

1 safety of students and school personnel.

2 B. A school district shall use these guidelines to
3 complete a self-assessment of the outstanding health or safety
4 deficiencies within the school district and provide cost
5 projections to correct the outstanding deficiencies.

6 C. The council shall develop a methodology for
7 prioritizing projects that will correct the deficiencies.

8 D. After a public hearing and to the extent that
9 money is available in the fund for such purposes, the council
10 shall approve allocations from the fund on the established
11 priority basis and, working with the school district and
12 pursuant to the Procurement Code, enter into construction
13 contracts with contractors to correct the deficiencies.

14 E. In entering into construction contracts to
15 correct deficiencies pursuant to this section, the council
16 shall include such terms and conditions as necessary to ensure
17 that the state money is expended in the most prudent manner
18 possible and consistent with the original purpose.

19 F. Any deficiency that may adversely affect the
20 health or safety of students or school personnel may be
21 corrected pursuant to this section, regardless of the local
22 effort or percentage of indebtedness of the school district.

23 G. It is the intent of the legislature that all
24 outstanding deficiencies in public schools and grounds that may
25 adversely affect the health or safety of students and school

1 personnel be identified and awards made pursuant to this
2 section no later than June 30, 2005, and that funds be expended
3 no later than June 30, 2007, provided that the council may
4 extend the expenditure period to no later than June 30, 2008
5 for up to three unfinished projects upon a determination that a
6 project requires the additional time because existing buildings
7 need to be demolished or because of other extenuating
8 circumstances."

9 Section 4. Section 22-24-5 NMSA 1978 (being Laws 1975,
10 Chapter 235, Section 5, as amended) is amended to read:

11 "22-24-5. PUBLIC SCHOOL CAPITAL OUTLAY PROJECTS--
12 APPLICATION--GRANT ASSISTANCE.--

13 A. Applications for grant assistance, the approval
14 of applications, the prioritization of projects and grant
15 awards shall be conducted pursuant to the provisions of this
16 section.

17 B. Except as provided in Sections 22-24-4.3,
18 22-24-5.4 and 22-24-5.6 NMSA 1978, the following provisions
19 govern grant assistance from the fund for a public school
20 capital outlay project not wholly funded pursuant to Section
21 22-24-4.1 NMSA 1978:

22 (1) all school districts are eligible to apply
23 for funding from the fund, regardless of percentage of
24 indebtedness;

25 (2) priorities for funding shall be determined

1 by using the statewide adequacy standards developed pursuant to
2 Subsection C of this section; provided that:

3 (a) the council shall apply the
4 standards to charter schools to the same extent that they are
5 applied to other public schools; and

6 (b) in an emergency in which the health
7 or safety of students or school personnel is at immediate risk
8 or in which there is a threat of significant property damage,
9 the council may award grant assistance for a project using
10 criteria other than the statewide adequacy standards;

11 (3) the council shall establish criteria to be
12 used in public school capital outlay projects that receive
13 grant assistance pursuant to the Public School Capital Outlay
14 Act. In establishing the criteria, the council shall consider:

15 (a) the feasibility of using design,
16 build and finance arrangements for public school capital outlay
17 projects;

18 (b) the potential use of more durable
19 construction materials that may reduce long-term operating
20 costs; [and]

21 (c) concepts that promote efficient but
22 flexible utilization of space; and

23 [~~e~~] (d) any other financing or
24 construction concept that may maximize the dollar effect of the
25 state grant assistance;

1 (4) no more than ten percent of the combined
2 total of grants in a funding cycle shall be used for
3 retrofitting existing facilities for technology infrastructure;

4 (5) except as provided in Paragraph (6) or (8)
5 of this subsection, the state share of a project approved and
6 ranked by the council shall be funded within available
7 resources pursuant to the provisions of this paragraph. No
8 later than May 1 of each calendar year, a value shall be
9 calculated for each school district in accordance with the
10 following procedure:

11 (a) the final prior year net taxable
12 value for a school district divided by the MEM for that school
13 district is calculated for each school district;

14 (b) the final prior year net taxable
15 value for the whole state divided by the MEM for the state is
16 calculated;

17 (c) excluding any school district for
18 which the result calculated pursuant to Subparagraph (a) of
19 this paragraph is more than twice the result calculated
20 pursuant to Subparagraph (b) of this paragraph, the results
21 calculated pursuant to Subparagraph (a) of this paragraph are
22 listed from highest to lowest;

23 (d) the lowest value listed pursuant to
24 Subparagraph (c) of this paragraph is subtracted from the
25 highest value listed pursuant to that subparagraph;

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1 (e) the value calculated pursuant to
2 Subparagraph (a) of this paragraph for the subject school
3 district is subtracted from the highest value listed in
4 Subparagraph (c) of this paragraph;

5 (f) the result calculated pursuant to
6 Subparagraph (e) of this paragraph is divided by the result
7 calculated pursuant to Subparagraph (d) of this paragraph;

8 (g) the sum of the property tax mill
9 levies for the prior tax year imposed by each school district
10 on residential property pursuant to Chapter 22, Article 18 NMSA
11 1978, the Public School Capital Improvements Act, the Public
12 School Buildings Act, the Education Technology Equipment Act
13 and Paragraph (2) of Subsection B of Section 7-37-7 NMSA 1978
14 is calculated for each school district;

15 (h) the lowest value calculated pursuant
16 to Subparagraph (g) of this paragraph is subtracted from the
17 highest value calculated pursuant to that subparagraph;

18 (i) the lowest value calculated pursuant
19 to Subparagraph (g) of this paragraph is subtracted from the
20 value calculated pursuant to that subparagraph for the subject
21 school district;

22 (j) the value calculated pursuant to
23 Subparagraph (i) of this paragraph is divided by the value
24 calculated pursuant to Subparagraph (h) of this paragraph;

25 (k) if the value calculated for a

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1 subject school district pursuant to Subparagraph (j) of this
2 paragraph is less than five-tenths, then, except as provided in
3 Subparagraph (n) or (o) of this paragraph, the value for that
4 school district equals the value calculated pursuant to
5 Subparagraph (f) of this paragraph;

6 (l) if the value calculated for a
7 subject school district pursuant to Subparagraph (j) of this
8 paragraph is five-tenths or greater, then that value is
9 multiplied by five-hundredths;

10 (m) if the value calculated for a
11 subject school district pursuant to Subparagraph (j) of this
12 paragraph is five-tenths or greater, then the value calculated
13 pursuant to Subparagraph (l) of this paragraph is added to the
14 value calculated pursuant to Subparagraph (f) of this
15 paragraph. Except as provided in Subparagraph (n) or (o) of
16 this paragraph, the sum equals the value for that school
17 district;

18 (n) in those instances in which the
19 calculation pursuant to Subparagraph (k) or (m) of this
20 paragraph yields a value less than one-tenth, one-tenth shall
21 be used as the value for the subject school district;

22 (o) in those instances in which the
23 calculation pursuant to Subparagraph (k) or (m) of this
24 paragraph yields a value greater than one, one shall be used as
25 the value for the subject school district;

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(p) except as provided in Section 22-24-5.7 or 22-24-5.8 NMSA 1978 and except as ~~[reduced]~~ adjusted pursuant to Paragraph (6) or (8) of this subsection, the amount to be distributed from the fund for an approved project shall equal the total project cost multiplied by a fraction the numerator of which is the value calculated for the subject school district in the current year plus the value calculated for that school district in each of the two preceding years and the denominator of which is three; and

(q) as used in this paragraph: 1) "MEM" means the average full-time-equivalent enrollment of students attending public school in a school district on the eightieth and one hundred twentieth days of the prior school year; ~~[and]~~ 2) "total project cost" means the total amount necessary to complete the public school capital outlay project less any insurance reimbursement received by the school district for the project; and 3) in the case of a state-chartered charter school that has submitted an application for grant assistance pursuant to this section, the "value calculated for the subject school district" means the value calculated for the school district in which the state-chartered charter school is physically located;

(6) the amount calculated pursuant to Subparagraph (p) of Paragraph (5) of this subsection shall be reduced by the following procedure:

(a) the total of all legislative

1 appropriations made after January 1, 2003 for nonoperating
2 purposes either directly to the subject school district or to
3 another governmental entity for the purpose of passing the
4 money through directly to the subject school district, and not
5 rejected by the subject school district, [~~but excluding~~
6 ~~educational technology appropriations made prior to January 1,~~
7 ~~2005 and reauthorizations of appropriations previously made to~~
8 ~~the subject school district]~~ is calculated; provided that: 1)
9 an appropriation made in a fiscal year shall be deemed to be
10 accepted by a school district unless, prior to June 1 of that
11 fiscal year, the school district notifies the department of
12 finance and administration and the public education department
13 that the district is rejecting the appropriation; [~~provided~~
14 ~~further that the total shall be increased by an amount,~~
15 ~~certified to the council by the department, equal to the~~
16 ~~educational technology appropriations made to the subject~~
17 ~~school district on or after January 1, 2003 and prior to~~
18 ~~January 1, 2005 and not previously used to offset distributions~~
19 ~~pursuant to the Technology for Education Act]~~ 2) the total
20 shall exclude any educational technology appropriation made
21 prior to January 1, 2005 unless the appropriation was on or
22 after January 1, 2003 and not previously used to offset
23 distributions pursuant to the Technology for Education Act; 3)
24 the total shall exclude any appropriation previously made to
25 the subject school district that is reauthorized for

1 expenditure by another recipient; 4) the total shall exclude
2 one-half of the amount of any appropriation made or
3 reauthorized after January 1, 2007 if the purpose of the
4 appropriation or reauthorization is to fund, in whole or in
5 part, a capital outlay project that, when prioritized by the
6 council pursuant to this section either in the immediately
7 preceding funding cycle or in the current funding cycle, ranked
8 in the top one hundred fifty projects statewide; and 5) unless
9 the grant award is made to the state-chartered charter school,
10 the total shall exclude appropriations made after January 1,
11 2007 for nonoperating purposes of a specific state-chartered
12 charter school, regardless of whether the charter school is a
13 state-chartered charter school at the time of the appropriation
14 or later opts to become a state-chartered charter school;

15 (b) the applicable fraction used for the
16 subject school district and the current calendar year for the
17 calculation in Subparagraph (p) of Paragraph (5) of this
18 subsection is subtracted from one;

19 (c) the value calculated pursuant to
20 Subparagraph (a) of this paragraph for the subject school
21 district is multiplied by the amount calculated pursuant to
22 Subparagraph (b) of this paragraph for that school district;

23 (d) the total amount of reductions for
24 the subject school district previously made pursuant to
25 Subparagraph (e) of this paragraph for other approved public

1 school capital outlay projects is subtracted from the amount
2 calculated pursuant to Subparagraph (c) of this paragraph; and

3 (e) the amount calculated pursuant to
4 Subparagraph (p) of Paragraph (5) of this subsection shall be
5 reduced by the amount calculated pursuant to Subparagraph (d)
6 of this paragraph;

7 (7) as used in Paragraphs (5) and (6) of this
8 subsection, "subject school district" means the school district
9 that has submitted the application for funding and in which the
10 approved public school capital outlay project will be located;

11 (8) the council may adjust the amount of local
12 share otherwise required if it determines that a school
13 district has used all of its local resources. Before making
14 any adjustment to the local share, the council shall consider
15 whether:

16 (a) the school district has insufficient
17 bonding capacity over the next four years to provide the local
18 match necessary to complete the project and, for all
19 educational purposes, has a residential property tax rate of at
20 least ten dollars (\$10.00) on each one thousand dollars
21 (\$1,000) of taxable value, as measured by the sum of all rates
22 imposed by resolution of the local school board plus rates set
23 to pay interest and principal on outstanding school district
24 general obligation bonds;

25 (b) the school district: 1) has fewer

1 than an average of eight hundred full-time-equivalent students
2 on the eightieth and one hundred twentieth days of the prior
3 school year; 2) has at least seventy percent of its students
4 eligible for free or reduced-fee lunch; 3) has a share of the
5 total project cost, as calculated pursuant to provisions of
6 this section, that would be greater than fifty percent; and 4)
7 for all educational purposes, has a residential property tax
8 rate of at least seven dollars (\$7.00) on each one thousand
9 dollars (\$1,000) of taxable value, as measured by the sum of
10 all rates imposed by resolution of the local school board plus
11 rates set to pay interest and principal on outstanding school
12 district general obligation bonds; or

13 (c) the school district has: 1) an
14 enrollment growth rate over the previous school year of at
15 least two and one-half percent; 2) pursuant to its five-year
16 facilities plan, will be building a new school within the next
17 two years; and 3) for all educational purposes, has a
18 residential property tax rate of at least ten dollars (\$10.00)
19 on each one thousand dollars (\$1,000) of taxable value, as
20 measured by the sum of all rates imposed by resolution of the
21 local school board plus rates set to pay interest and principal
22 on outstanding school district general obligation bonds; and

23 (9) no application for grant assistance from
24 the fund shall be approved unless the council determines that:

25 (a) the public school capital outlay

1 project is needed and included in the school district's
2 five-year facilities plan among its top priorities;

3 (b) the school district has used its
4 capital resources in a prudent manner;

5 (c) the school district has provided
6 insurance for buildings of the school district in accordance
7 with the provisions of Section 13-5-3 NMSA 1978;

8 (d) the school district has submitted a
9 five-year facilities plan that includes: 1) enrollment
10 projections; 2) a current preventive maintenance plan that has
11 been approved by the council pursuant to Section 22-24-5.3 NMSA
12 1978 and that is followed by each public school in the
13 district; 3) the capital needs of charter schools located in
14 the school district; and 4) projections for the facilities
15 needed in order to maintain a full-day kindergarten program;

16 (e) the school district is willing and
17 able to pay any portion of the total cost of the public school
18 capital outlay project that, according to Paragraph (5), (6) or
19 (8) of this subsection, is not funded with grant assistance
20 from the fund; provided that school district funds used for a
21 project that was initiated after September 1, 2002 when the
22 statewide adequacy standards were adopted, but before September
23 1, 2004 when the standards were first used as the basis for
24 determining the state and school district share of a project,
25 may be applied to the school district portion required for that

1 project;

2 (f) the application includes the capital
3 needs of any charter school located in the school district or
4 the school district has shown that the facilities of the
5 charter school have a smaller deviation from the statewide
6 adequacy standards than other district facilities included in
7 the application; and

8 (g) the school district has agreed, in
9 writing, to comply with any reporting requirements or
10 conditions imposed by the council pursuant to Section 22-24-5.1
11 NMSA 1978.

12 C. After consulting with the public school capital
13 outlay oversight task force and other experts, the council
14 shall regularly review and update statewide adequacy standards
15 applicable to all school districts. The standards shall
16 establish the acceptable level for the physical condition and
17 capacity of buildings, the educational suitability of
18 facilities and the need for technological infrastructure.
19 Except as otherwise provided in the Public School Capital
20 Outlay Act, the amount of outstanding deviation from the
21 standards shall be used by the council in evaluating and
22 prioritizing public school capital outlay projects.

23 D. The acquisition of a facility by a school
24 district or charter school pursuant to a financing agreement
25 that provides for lease payments with an option to purchase for

1 a price that is reduced according to lease payments made may be
2 considered a public school capital outlay project and eligible
3 for grant assistance under this section pursuant to the
4 following criteria:

5 (1) no grant shall be awarded unless, prior to
6 use by the school district or charter school, the council finds
7 that the facility will equal or exceed the statewide adequacy
8 standards and the building standards for public school
9 facilities;

10 (2) no grant shall be awarded unless the
11 school district and the need for the facility meet all of the
12 requirements for grant assistance pursuant to the Public School
13 Capital Outlay Act;

14 (3) the total project cost shall equal the
15 total payments that would be due under the agreement if the
16 school district or charter school would eventually acquire
17 title to the facility;

18 (4) the portion of the total project cost to
19 be paid from the fund may be awarded as one grant, but
20 disbursements from the fund shall be made from time to time as
21 lease payments become due;

22 (5) the portion of the total project cost to
23 be paid by the school district shall be paid from time to time
24 as lease payments become due; and

25 (6) neither a grant award nor any provision of

1 the Public School Capital Outlay Act creates a legal obligation
2 for the school district or charter school to continue the lease
3 from year to year or to purchase the facility.

4 E. In order to encourage private capital investment
5 in the construction of public school facilities, the purchase
6 of a privately owned school facility that is, at the time of
7 application, in use by a school district may be considered a
8 public school capital outlay project and eligible for grant
9 assistance pursuant to this section if the council finds that:

10 (1) at the time of the initial use by the
11 school district, the facility to be purchased equaled or
12 exceeded the statewide adequacy standards and the building
13 standards for public school facilities;

14 (2) at the time of application, attendance at
15 the facility to be purchased is at seventy-five percent or
16 greater of design capacity and the attendance at other schools
17 in the school district that the students at the facility would
18 otherwise attend is at eighty-five percent or greater of design
19 capacity; and

20 (3) the school district and the capital outlay
21 project meet all of the requirements for grant assistance
22 pursuant to the Public School Capital Outlay Act; provided
23 that, when determining the deviation from the statewide
24 adequacy standards for the purposes of evaluating and
25 prioritizing the project, the students using the facility shall

1 be deemed to be attending other schools in the school district.

2 ~~[D.]~~ F. It is the intent of the legislature that
3 grant assistance made pursuant to this section allows every
4 school district to meet the standards developed pursuant to
5 Subsection C of this section; provided, however, that nothing
6 in the Public School Capital Outlay Act or the development of
7 standards pursuant to that act prohibits a school district from
8 using local funds to exceed the statewide adequacy standards.

9 ~~[E.]~~ G. Upon request, the council shall work with,
10 and provide assistance and information to, the public school
11 capital outlay oversight task force.

12 ~~[F.]~~ H. The council may establish committees or
13 task forces, not necessarily consisting of council members, and
14 may use the committees or task forces, as well as existing
15 agencies or organizations, to conduct studies, conduct surveys,
16 submit recommendations or otherwise contribute expertise from
17 the public schools, programs, interest groups and segments of
18 society most concerned with a particular aspect of the
19 council's work.

20 ~~[G.]~~ I. Upon the recommendation of the public
21 school facilities authority, the council shall develop building
22 standards for public school facilities and shall promulgate
23 other such rules as are necessary to carry out the provisions
24 of the Public School Capital Outlay Act.

25 ~~[H.]~~ J. No later than December 15 of each year, the

1 council shall prepare a report summarizing its activities
2 during the previous fiscal year. The report shall describe in
3 detail all projects funded, the progress of projects previously
4 funded but not completed, the criteria used to prioritize and
5 fund projects and all other council actions. The report shall
6 be submitted to the public education commission, the governor,
7 the legislative finance committee, the legislative education
8 study committee and the legislature."

9 Section 5. A new section of the Public School Capital
10 Outlay Act, Section 22-24-5.8 NMSA 1978, is enacted to read:

11 "22-24-5.8. [NEW MATERIAL] SUPPLEMENTAL FUNDING FOR
12 PROJECTS IN CERTAIN SCHOOL DISTRICTS.--

13 A. A school district receiving grant assistance
14 from the fund pursuant to Section 22-24-5 NMSA 1978 for a
15 public school capital outlay project shall receive an
16 additional grant from the fund in order for the project to
17 exceed the statewide adequacy standards if the school district
18 and proposed use of the additional grant qualify pursuant to
19 the provisions of Subsection B of this section.

20 B. A school district shall receive the additional
21 grant if the council determines that:

22 (1) in calculating the grant assistance from
23 the fund for the project pursuant to Section 22-24-5 NMSA 1978,
24 the value calculated for the school district pursuant to
25 Subparagraph (k), (m), (n) or (o) of Paragraph (5) of

1 Subsection B of that section is equal to or greater than seven-
2 tenths;

3 (2) in the current year and at all times
4 during the previous three years, the school district has a
5 residential property tax rate of at least nine dollars (\$9.00)
6 on each one thousand dollars (\$1,000) of taxable value, as
7 measured by the sum of all rates imposed by resolution of the
8 local school board plus rates set to pay interest and principal
9 on outstanding school district general obligation bonds;

10 (3) at least seventy percent of the students
11 in the school district are eligible for free or reduced-fee
12 lunch;

13 (4) for the next four years, any local
14 resources of the school district will be expended for the local
15 match required for public school capital outlay projects and,
16 therefore, the school district will have no available local
17 resources to expend on the project so it is unlikely that the
18 project will ever exceed the statewide adequacy standards; and

19 (5) the planned use of the additional grant to
20 exceed the statewide adequacy standards will enhance public
21 school education in the school district and is a prudent use of
22 state money.

23 C. The amount of an additional grant awarded
24 pursuant to this section shall equal the total project cost
25 multiplied by the lesser of:

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1 (1) the value calculated for the school
2 district pursuant to Subparagraph (k), (m), (n) or (o) of
3 Paragraph (5) of Subsection B of Section 22-24-5 NMSA 1978
4 minus six-tenths; or

5 (2) twenty-five hundredths.

6 D. All provisions of the Public School Capital
7 Outlay Act relating to the expenditure of other grants awarded
8 from the fund, including those provisions relating to
9 reporting, oversight, project access and accountability, apply
10 to the use and expenditure of additional grants made pursuant
11 to this section."

12 Section 6. Section 22-25-1 NMSA 1978 (being Laws 1975
13 (S.S.), Chapter 5, Section 1) is amended to read:

14 "22-25-1. SHORT TITLE.--~~[This act]~~ Chapter 22, Article 25
15 NMSA 1978 may be cited as the "Public School Capital
16 Improvements Act".

17 Section 7. Section 22-25-2 NMSA 1978 (being Laws 1975
18 (S.S.), Chapter 5, Section 2, as amended) is amended to read:

19 "22-25-2. DEFINITIONS.--As used in the Public School
20 Capital Improvements Act:

21 A. "program unit" means the product of the program
22 element multiplied by the applicable cost differential factor,
23 as defined in Section 22-8-2 NMSA 1978; and

24 B. "capital improvements" means expenditures,
25 including payments made with respect to lease-purchase

1 arrangements as defined in the Education Technology Equipment
2 Act but excluding any other debt service expenses, for:

3 (1) erecting, remodeling, making additions to,
4 providing equipment for or furnishing public school buildings;

5 (2) payments made pursuant to a financing
6 agreement entered into by a school district or a charter school
7 for the leasing of a building or other real property with an
8 option to purchase for a price that is reduced according to
9 payments made;

10 [~~(2)~~] (3) purchasing or improving public
11 school grounds;

12 [~~(3)~~] (4) maintenance of public school
13 buildings or public school grounds, including payments under
14 contracts for maintenance support services and expenditures for
15 technical training and certification for maintenance and
16 facilities management personnel, but excluding salary expenses
17 of school district employees;

18 [~~(4)~~] (5) purchasing activity vehicles for
19 transporting students to extracurricular school activities;
20 [~~and~~] or

21 [~~(5)~~] (6) purchasing computer software and
22 hardware for student use in public school classrooms."

23 Section 8. Section 22-25-9 NMSA 1978 (being Laws 1975
24 (S.S.), Chapter 5, Section 9, as amended) is amended to read:

25 "22-25-9. STATE DISTRIBUTION TO SCHOOL DISTRICT IMPOSING

1 TAX UNDER CERTAIN CIRCUMSTANCES.--

2 A. Except as provided in Section 22-25-11 NMSA 1978
3 and in Subsection C or G of this section, the secretary shall
4 distribute to any school district that has imposed a tax under
5 the Public School Capital Improvements Act an amount from the
6 public school capital improvements fund that is equal to the
7 amount by which the revenue estimated to be received from the
8 imposed tax, at the rate certified by the department of finance
9 and administration in accordance with Section 22-25-7 NMSA
10 1978, assuming a one hundred percent collection rate, is less
11 than an amount calculated by multiplying the school district's
12 first forty days' total program units by the amount specified
13 in Subsection B of this section and further multiplying the
14 product obtained by the tax rate approved by the qualified
15 electors in the most recent election on the question of
16 imposing a tax under the Public School Capital Improvements
17 Act. The distribution shall be made each year that the tax is
18 imposed in accordance with Section 22-25-7 NMSA 1978; provided
19 that no state distribution from the public school capital
20 improvements fund may be used for capital improvements to any
21 administration building of a school district. In the event
22 that sufficient funds are not available in the public school
23 capital improvements fund to make the state distribution
24 provided for in this section, the dollar per program unit
25 figure shall be reduced as necessary.

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1 B. In calculating the state distribution pursuant
2 to Subsection A of this section, the following amounts shall be
3 used:

4 (1) the amount calculated pursuant to
5 Subsection D of this subsection per program unit; and

6 (2) an additional amount certified to the
7 secretary by the public school capital outlay council. No
8 later than June 1 of each year, the council shall determine the
9 amount needed in the next fiscal year for public school capital
10 outlay projects pursuant to the Public School Capital Outlay
11 Act and the amount of revenue, from all sources, available for
12 the projects. If, in the sole discretion of the council, the
13 amount available exceeds the amount needed, the council may
14 certify an additional amount pursuant to this paragraph;
15 provided that the sum of the amount calculated pursuant to this
16 paragraph plus the amount in Paragraph (1) of this subsection
17 shall not result in a total statewide distribution that, in the
18 opinion of the council, exceeds one-half of the total revenue
19 estimated to be received from taxes imposed pursuant to the
20 Public School Capital Improvements Act.

21 C. For any fiscal year notwithstanding the amount
22 calculated to be distributed pursuant to Subsections A and B of
23 this section, except as provided in Subsection G of this
24 section, a school district, the voters of which have approved a
25 tax pursuant to Section 22-25-3 NMSA 1978, shall not receive a

1 distribution less than the amount calculated pursuant to
2 Subsection E of this section, multiplied by the school
3 district's first forty days' total program units and further
4 multiplying the product obtained by the approved tax rate.

5 D. For purposes of calculating the distribution
6 pursuant to Subsection B of this section, the amount used in
7 Paragraph (1) of that subsection shall equal [~~sixty dollars~~
8 ~~(\$60.00) in fiscal year 2006~~] seventy dollars (\$70.00) in
9 fiscal year 2008 and in each subsequent fiscal year shall equal
10 the amount for the previous fiscal year adjusted by the
11 percentage increase between the next preceding calendar year
12 and the preceding calendar year of the consumer price index for
13 the United States, all items, as published by the United States
14 department of labor.

15 E. For purposes of calculating the minimum
16 distribution pursuant to Subsection C of this section, the
17 amount used in that subsection shall equal five dollars (\$5.00)
18 through fiscal year 2005 and in each subsequent fiscal year
19 shall equal the amount for the previous fiscal year adjusted by
20 the percentage increase between the next preceding calendar
21 year and the preceding calendar year of the consumer price
22 index for the United States, all items, as published by the
23 United States department of labor.

24 F. In expending distributions made pursuant to this
25 section, school districts shall give priority to maintenance

1 projects, including payments under contracts for maintenance
2 support services. In addition, distributions made pursuant to
3 this section may be expended by school districts for the school
4 district portion of:

5 (1) the total project cost for roof repair or
6 replacement required by Section 22-24-4.3 NMSA 1978; or

7 (2) payments made under a financing agreement
8 entered into by a school district or a charter school for the
9 leasing of a building or other real property with an option to
10 purchase for a price that is reduced according to the payments
11 made, if the school district has received a grant for the state
12 share of the payments pursuant to Subsection D of Section
13 22-24-5 NMSA 1978.

14 G. If a serious deficiency in a roof of a public
15 school facility has been corrected pursuant to Section
16 22-24-4.4 NMSA 1978 and the school district has refused to pay
17 its share of the cost as determined by that section, until the
18 public school capital outlay fund is reimbursed in full for the
19 share attributed to the district, the distribution calculated
20 pursuant to this section shall not be made to the school
21 district but shall be made to the public school capital outlay
22 fund.

23 H. In making distributions pursuant to this
24 section, the secretary shall include such reporting
25 requirements and conditions as are required by rule of the

1 public school capital outlay council. The council shall adopt
2 such requirements and conditions as are necessary to ensure
3 that the distributions are expended in the most prudent manner
4 possible and are consistent with the original purpose as
5 specified in the authorizing resolution. Copies of reports or
6 other information received by the secretary in response to the
7 requirements and conditions shall be forwarded to the council."

8 Section 9. Section 7-38-38.1 NMSA 1978 (being Laws 1986,
9 Chapter 20, Section 116, as amended) is amended to read:

10 "7-38-38.1. RECIPIENTS OF REVENUE PRODUCED THROUGH AD
11 VALOREM LEVIES REQUIRED TO PAY COUNTIES ADMINISTRATIVE CHARGE
12 TO OFFSET COLLECTION COSTS.--

13 A. As used in this section:

14 (1) "revenue" means money for which a county
15 treasurer has the legal responsibility for collection and which
16 is owed to a revenue recipient as a result of an imposition
17 authorized by law of a rate expressed in mills per dollar or
18 dollars per thousands of dollars of net taxable value of
19 property, assessed value of property or a similar term,
20 including but not limited to money resulting from the
21 authorization of rates and impositions under Subsection B and
22 Paragraphs (1) and (2) of Subsection C of Section 7-37-7 NMSA
23 1978, special levies for special purposes and benefit
24 assessments, but the term does not include any money resulting
25 from the imposition of taxes imposed under the provisions of

1 the Oil and Gas Ad Valorem Production Tax Act, the Oil and Gas
2 Production Equipment Ad Valorem Tax Act or the Copper
3 Production Ad Valorem Tax Act or money resulting from
4 impositions under Paragraph (3) of Subsection C of Section
5 7-37-7 NMSA 1978; and

6 (2) "revenue recipient" means the state and
7 any of its political subdivisions, including charter schools
8 but excluding institutions of higher education located in class
9 A counties and class B counties having more than three hundred
10 million dollars (\$300,000,000) valuation, that are authorized
11 by law to receive revenue.

12 B. Prior to the distribution to a revenue recipient
13 of revenue received by a county treasurer, the treasurer shall
14 deduct as an administrative charge an amount equal to one
15 percent of the revenue received.

16 C. The "county property valuation fund" is created.
17 All administrative charges deducted by the county treasurer
18 shall be distributed to the county property valuation fund.

19 D. Expenditures from the county property valuation
20 fund shall be made pursuant to a property valuation program
21 presented by the county assessor and approved by the majority
22 of the county commissioners."

23 Section 10. Section 22-8B-4 NMSA 1978 (being Laws 1999,
24 Chapter 281, Section 4, as amended) is amended to read:

25 "22-8B-4. CHARTER SCHOOLS' RIGHTS AND RESPONSIBILITIES--

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1 OPERATION.--

2 A. A charter school shall be subject to all federal
3 and state laws and constitutional provisions prohibiting
4 discrimination on the basis of disability, race, creed, color,
5 gender, national origin, religion, ancestry or need for special
6 education services.

7 B. A charter school shall be governed by a
8 governing body in the manner set forth in the charter; provided
9 that a governing body shall have at least five members; and
10 provided further that no member of a governing body for a
11 charter school that is initially approved on or after July 1,
12 2005 or whose charter is renewed on or after July 1, 2005 shall
13 serve on the governing body of another charter school.

14 C. A charter school shall be responsible for:

15 (1) its own operation, including preparation
16 of a budget, subject to audits pursuant to the Audit Act; and

17 (2) contracting for services and personnel
18 matters.

19 D. A charter school may contract with a school
20 district, a university or college, the state, another political
21 subdivision of the state, the federal government or one of its
22 agencies, a tribal government or any other third party for the
23 use of a facility, its operation and maintenance and the
24 provision of any service or activity that the charter school is
25 required to perform in order to carry out the educational

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1 program described in its charter. Facilities used by a charter
2 school shall meet the standards required pursuant to Section
3 22-8B-4.2 NMSA 1978.

4 E. A conversion school chartered before July 1,
5 2007 may choose to continue using the school district
6 facilities and equipment it had been using prior to conversion,
7 subject to the provisions of Subsection F of this section.

8 F. The school district in which a charter school is
9 geographically located shall provide a charter school with
10 available facilities for the school's operations unless the
11 facilities are currently used for other educational purposes.

12 ~~[A charter school shall not be required to pay rent for the~~
13 ~~school district facilities if the facilities can be provided at~~
14 ~~no cost to the school district. If facilities are available~~
15 ~~but cannot be provided at no cost to the school district, the~~
16 ~~school district shall not charge more than the actual direct~~
17 ~~cost of providing the facilities.]~~ An agreement for the use of
18 school district facilities by a charter school may provide for
19 reasonable lease payments; provided that the payments do not
20 exceed the sum of the lease reimbursement rate provided in
21 Subparagraph (b) of Paragraph (1) of Subsection I of Section
22 22-24-4 NMSA 1978 plus any reimbursement for actual direct
23 costs incurred by the school district in providing the
24 facilities; and, provided further, that any lease payments
25 received by a school district may be retained by the school

1 district and shall not be considered to be cash balances in any
2 calculation pursuant to Section 22-8-41 NMSA 1978. The
3 available facilities provided by a school district to a charter
4 school shall meet all occupancy standards as specified by the
5 public school capital outlay council. As used in this
6 subsection, "other educational purposes" includes health
7 clinics, daycare centers, teacher training centers, school
8 district administration functions and other ancillary services
9 related to a school district's functions and operations.

10 G. A locally chartered charter school may pay the
11 costs of operation and maintenance of its facilities or may
12 contract with the school district to provide facility operation
13 and maintenance services.

14 H. Locally chartered charter school facilities are
15 eligible for state and local capital outlay funds and shall be
16 included in the school district's five-year facilities plan.

17 I. A locally chartered charter school shall
18 negotiate with a school district to provide transportation to
19 students eligible for transportation under the provisions of
20 the Public School Code. The school district, in conjunction
21 with the charter school, may establish a limit for student
22 transportation to and from the charter school site not to
23 extend beyond the school district boundary.

24 J. A charter school shall be a nonsectarian,
25 nonreligious and non-home-based public school.

1 K. Except as otherwise provided in the Public
2 School Code, a charter school shall not charge tuition or have
3 admission requirements.

4 L. With the approval of the chartering authority, a
5 single charter school may maintain separate facilities at two
6 or more locations within the same school district; but, for
7 purposes of calculating program units pursuant to the Public
8 School Finance Act, the separate facilities shall be treated
9 together as one school.

10 M. A charter school shall be subject to the
11 provisions of Section 22-2-8 NMSA 1978 and the Assessment and
12 Accountability Act.

13 N. Within constitutional and statutory limits, a
14 charter school may acquire and dispose of property; provided
15 that, upon termination of the charter, all assets of the
16 locally chartered charter school shall revert to the local
17 school board and all assets of the state-chartered charter
18 school shall revert to the state, except that, if all or any
19 portion of a state-chartered charter school facility is
20 financed with the proceeds of general obligation bonds issued
21 by a local school board, the facility shall revert to the local
22 school board.

23 O. The governing body of a charter school may
24 accept or reject any charitable gift, grant, devise or bequest;
25 provided that no such gift, grant, devise or bequest shall be

1 accepted if subject to any condition contrary to law or to the
2 terms of the charter. The particular gift, grant, devise or
3 bequest shall be considered an asset of the charter school to
4 which it is given.

5 P. The governing body may contract and sue and be
6 sued. A local school board shall not be liable for any acts or
7 omissions of the charter school.

8 Q. A charter school shall comply with all state and
9 federal health and safety requirements applicable to public
10 schools, including those health and safety codes relating to
11 educational building occupancy.

12 R. A charter school is a public school that may
13 contract with a school district or other party for provision of
14 financial management, food services, transportation,
15 facilities, education-related services or other services. The
16 governing body shall not contract with a for-profit entity for
17 the management of the charter school.

18 S. To enable state-chartered charter schools to
19 submit required data to the department, an accountability data
20 system shall be maintained by the department.

21 T. A charter school shall comply with all
22 applicable state and federal laws and rules related to
23 providing special education services. Charter school students
24 with disabilities and their parents retain all rights under the
25 federal Individuals with Disabilities Education Act and its

1 implementing state and federal rules. Each charter school is
2 responsible for identifying, evaluating and offering a free
3 appropriate public education to all eligible children who are
4 accepted for enrollment in that charter school. The state-
5 chartered charter school, as a local educational agency, shall
6 assume responsibility for determining students' needs for
7 special education and related services. The division may
8 promulgate rules to implement the requirements of this
9 subsection."

10 Section 11. Section 22-8B-4.2 NMSA 1978 (being Laws 2005,
11 Chapter 221, Section 3 and Laws 2005, Chapter 274, Section 2)
12 is amended to read:

13 "22-8B-4.2. CHARTER SCHOOL FACILITIES--STANDARDS.--

14 A. The facilities of a charter school that is
15 approved on or after July 1, 2005 and before July 1, 2010 shall
16 meet educational occupancy standards required by applicable New
17 Mexico construction codes.

18 B. The facilities of a charter school that is in
19 existence, or has been approved, prior to July 1, 2005 shall be
20 evaluated, prioritized and eligible for grants pursuant to the
21 Public School Capital Outlay Act in the same manner as all
22 other public schools in the state; provided that for charter
23 school facilities in leased facilities, grants may be used as
24 additional lease payments for leasehold improvements.

25 C. On or after July 1, 2010, an application for a

1 charter shall not be approved and an existing charter shall not
2 be renewed unless the charter school:

3 (1) is housed in a public building that is:

4 (a) owned by the charter school, the
5 school district, the state, an institution of the state,
6 another political subdivision of the state, the federal
7 government or one of its agencies or a tribal government; and

8 (b) subject to evaluation and
9 prioritization and eligible for grants pursuant to the Public
10 School Capital Outlay Act in the same manner as all other
11 public schools in the state; ~~[or]~~

12 (2) is housed in a building that meets the
13 statewide adequacy standards developed pursuant to the Public
14 School Capital Outlay Act and that is being leased by the
15 charter school pursuant to a financing agreement that contains
16 an option to purchase for a price that is reduced according to
17 the lease payments made; or

18 ~~[(2)]~~ (3) if it is not housed in a ~~[public]~~
19 building described in Paragraph (1) or (2) of this subsection,
20 demonstrates that:

21 (a) the facility in which the charter
22 school is housed meets the statewide adequacy standards
23 developed pursuant to the Public School Capital Outlay Act and
24 the owner of the facility is contractually obligated to
25 maintain those standards at no additional cost to the charter

1 school or the state; and

2 (b) either: 1) public buildings are not
3 available or adequate for the educational program of the
4 charter school; or 2) the owner of the facility is a nonprofit
5 entity specifically organized for the purpose of providing the
6 facility for the charter school.

7 D. The public school capital outlay council:

8 (1) shall determine whether facilities of a
9 charter school meet the educational occupancy standards
10 pursuant to the requirements of Subsection A of this section;

11 (2) shall determine whether facilities of a
12 charter school meet the requirements of Subsections B and C of
13 this section; and

14 (3) upon a determination that specific
15 requirements are not appropriate or reasonable for a charter
16 school, may grant a variance from those requirements for that
17 charter school."

18 Section 12. A new section of the Public School Capital
19 Improvements Act, Section 22-25-11 NMSA 1978, is enacted to
20 read:

21 "22-25-11. [NEW MATERIAL] AUTHORIZATION FOR ADDITIONAL
22 MILLAGE.--

23 A. In addition to the tax imposed pursuant to
24 Section 22-25-3 NMSA 1978, a local school board may adopt a
25 resolution to submit to the qualified electors of the school

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1 district the question of whether a property tax should be
2 imposed upon the net taxable value of property allocated to the
3 school district under the Property Tax Code at a rate not to
4 exceed that specified in the resolution for the purpose of
5 capital improvements in the school district. The resolution
6 shall:

7 (1) identify the capital improvements for
8 which the revenue proposed to be produced will be used;

9 (2) specify the rate of the proposed tax,
10 which shall not exceed one dollar (\$1.00) on each one thousand
11 dollars (\$1,000) of net taxable value of property allocated to
12 the school district under the Property Tax Code;

13 (3) specify the date an election will be held
14 to submit the question of imposition of the tax to the
15 qualified electors of the school district; and

16 (4) limit the imposition of the proposed tax
17 to no more than six property tax years.

18 B. The revenue produced by the application of the
19 additional tax levy shall be shared among all public schools in
20 the school district, including locally chartered and state-
21 chartered charter schools, and shall be in the same proportion
22 as the average full-time-equivalent enrollment of each school
23 on the fortieth day of the prior school year is to the total
24 such enrollment in the district; provided that, in the case of
25 a school that had not commenced classroom instruction in the

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1 prior school year, the proportion shall be based on the
2 estimated full-time-equivalent enrollment of the school and the
3 school district on the fortieth day of the current school year,
4 as determined by the department.

5 C. All provisions of the Public School Capital
6 Improvements Act that apply to the tax imposition provided for
7 in Section 22-25-3 NMSA 1978 apply to the tax imposition
8 provided for in this section except that a tax imposed pursuant
9 to this section shall not be taken into account when
10 calculating the state distribution pursuant to Section 22-25-9
11 NMSA 1978."

12 Section 13. Section 22-26-1 NMSA 1978 (being Laws 1983,
13 Chapter 163, Section 1) is amended to read:

14 "22-26-1. SHORT TITLE.--~~[This act]~~ Chapter 22, Article 26
15 NMSA 1978 may be cited as the "Public School Buildings Act".

16 Section 14. Section 22-26-2 NMSA 1978 (being Laws 1983,
17 Chapter 163, Section 2, as amended) is amended to read:

18 "22-26-2. ~~[DEFINITIONS]~~ DEFINITION.--As used in the
19 Public School Buildings Act, "capital improvements" means
20 expenditures, including payments made with respect to lease-
21 purchase arrangements as defined in the Education Technology
22 Equipment Act but excluding any other debt service expenses,
23 for:

24 A. erecting, remodeling, making additions to,
25 providing equipment for or furnishing public school buildings;

1 ~~[and]~~

2 B. payments made pursuant to a financing agreement
3 entered into by a school district or a charter school for the
4 leasing of a building or other real property with an option to
5 purchase for a price that is reduced according to payments
6 made;

7 ~~[B.]~~ C. purchasing or improving public school
8 grounds; or

9 D. administering the projects undertaken pursuant
10 to Subsections A and C of this section, including expenditures
11 for facility maintenance software, project management software,
12 project oversight and district personnel specifically related
13 to administration of projects funded by the Public School
14 Buildings Act; provided that expenditures pursuant to this
15 subsection shall not exceed five percent of the total project
16 costs."

17 Section 15. Section 22-26-3 NMSA 1978 (being Laws 1983,
18 Chapter 163, Section 3, as amended) is amended to read:

19 "22-26-3. AUTHORIZATION FOR LOCAL SCHOOL BOARD TO SUBMIT
20 QUESTION OF CAPITAL IMPROVEMENTS TAX IMPOSITION.--~~[Any]~~

21 A. A local school board may adopt a resolution to
22 submit to the qualified electors of the school district the
23 question of whether a property tax at a rate not to exceed the
24 rate specified in the resolution should be imposed upon the net
25 taxable value of property allocated to the school district

.164727.3

1 under the Property Tax Code for the purpose of capital
2 improvements to public schools in the school district. The
3 resolution shall:

4 (1) identify the capital improvements for
5 which the revenue proposed to be produced will be used;

6 ~~[A.]~~ (2) specify the rate of the proposed tax,
7 which shall not exceed ten dollars (\$10.00) on each one
8 thousand dollars (\$1,000) of net taxable value of property
9 allocated to the school district under the Property Tax Code;

10 ~~[B.]~~ (3) specify the date an election will be
11 held to submit the question of imposition of the tax to the
12 qualified electors of the district; and

13 ~~[C.]~~ (4) limit the imposition of the proposed
14 tax to no more than ~~[five]~~ six property tax years.

15 B. After July 1, 2007, a resolution submitted to
16 the qualified electors pursuant to Subsection A of this section
17 shall include capital improvements funding for locally
18 chartered and state-chartered charter schools located within
19 the school district. Each charter school shall provide the
20 necessary information to the school district for inclusion on
21 the resolution that identifies the capital improvements of the
22 charter school for which the revenue proposed to be produced
23 will be used."

24 Section 16. Section 22-26-5 NMSA 1978 (being Laws 1983,
25 Chapter 163, Section 5, as amended) is amended to read:

1 "22-26-5. CONDUCT OF ELECTION--NOTICE--BALLOT.--

2 A. An election on the question of imposing a tax
3 under the Public School Buildings Act may be held in
4 conjunction with a regular school district election or may be
5 conducted as or held in conjunction with a special school
6 district election, but the election shall be held prior to July
7 1 of the property tax year in which the tax is proposed to be
8 imposed. Conduct of the election shall be as prescribed in the
9 School Election Law for regular and special school district
10 elections.

11 B. The resolution required to be published as
12 notice of the election under Section 1-22-4 or 1-22-5 NMSA 1978
13 shall include as the question to be submitted to the voters
14 whether a property tax at a rate not to exceed the rate
15 specified in the authorizing resolution should be imposed for
16 the specified number of property tax years not exceeding [~~five~~]
17 six years upon the net taxable value of all property allocated
18 to the school district for capital improvements.

19 C. The ballot shall include the information
20 specified in Subsection B of this section and shall present the
21 voter the choice of voting "for the public school buildings
22 tax" or "against the public school buildings tax".

23 Section 17. Section 22-26-8 NMSA 1978 (being Laws 1983,
24 Chapter 163, Section 8, as amended) is amended to read:

25 "22-26-8. TAX TO BE IMPOSED FOR A MAXIMUM OF [~~FIVE~~] SIX

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1 YEARS.--A tax imposed in a school district as a result of an
2 election under the Public School Buildings Act shall be imposed
3 for one, two, three, four, [~~or~~] five or six years commencing
4 with the property tax year in which the election was held. The
5 local school board may direct that such levy be decreased or
6 not made for any year if, in its judgment, the total levy is
7 not necessary for such year and shall direct that the levy be
8 decreased by the amount required if a decrease is required by
9 operation of the rate limitation provisions of Section 7-37-7.1
10 NMSA 1978."

11 Section 18. A new section of the Public School Buildings
12 Act is enacted to read:

13 "[NEW MATERIAL] CHARTER SCHOOLS--RECEIPT OF LOCAL PROPERTY
14 TAX REVENUE.--If, in an election held after July 1, 2007, the
15 qualified electors of a school district have voted in favor of
16 the imposition of a property tax as provided in Section 22-26-3
17 NMSA 1978, the amount of tax revenue to be distributed to each
18 charter school shall be determined each year and shall be in
19 the same proportion as the average full-time-equivalent
20 enrollment of the charter school on the fortieth day of the
21 prior school year is to the total such enrollment in the
22 district; provided that, in the case of an approved charter
23 school that had not commenced classroom instruction in the
24 prior school year, the estimated full-time-equivalent
25 enrollment in the first year of instruction, as shown in the

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1 approved charter school application, shall be used, subject to
2 adjustment after the fortieth day. Each year, the department
3 shall certify to the county treasurer of the county in which
4 the charter schools in the school district are located the
5 percentage of the revenue to be distributed to each charter
6 school. The county treasurer shall distribute the charter
7 school's share of the property tax revenue directly to the
8 charter school."

9 Section 19. TEMPORARY PROVISION--RECOMPILATION
10 INSTRUCTIONS.--The compiler shall recompile Section 22-24-11
11 NMSA 1978 (being Laws 2006, Chapter 95, Section 3) as part of
12 the Public School Finance Act.

13 Section 20. EFFECTIVE DATE.--The effective date of the
14 provisions of this act is July 1, 2007.

SENATE BILL

48TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2007

INTRODUCED BY

FOR THE PUBLIC SCHOOL CAPITAL OUTLAY OVERSIGHT TASK FORCE

AN ACT

RELATING TO SCHOOLS; PROVIDING CRITERIA FOR ALLOCATIONS FROM
THE EDUCATIONAL TECHNOLOGY DEFICIENCY CORRECTION FUND;
EXTENDING THE PERIOD IN WHICH GRANTS FOR ROOF REPAIR AND
REPLACEMENT MAY BE EXPENDED; MAKING APPROPRIATIONS FOR
EDUCATIONAL TECHNOLOGY, ROOF REPAIR AND REPLACEMENT, THE
PURCHASE OF PORTABLE FACILITIES AND THE CORRECTION OF
DEFICIENCIES AT CERTAIN STATE EDUCATIONAL INSTITUTIONS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 22-15A-11 NMSA 1978 (being Laws 2005,
Chapter 222, Section 2) is amended to read:

"22-15A-11. EDUCATIONAL TECHNOLOGY DEFICIENCIES--
CORRECTION.--

A. No later than September 1, 2005, the bureau,
with the advice of the council and the office of the chief

.164726.1

1 information officer, shall define and develop minimum
2 educational technology adequacy standards to supplement the
3 adequacy standards developed by the public school capital
4 outlay council for school districts to use to identify
5 outstanding serious deficiencies in educational technology
6 infrastructure.

7 B. A school district shall use the standards to
8 complete a self-assessment of the outstanding educational
9 technology deficiencies within the school district and provide
10 cost projections to correct the outstanding deficiencies.

11 C. The bureau shall develop a methodology for
12 prioritizing projects that will correct the deficiencies.

13 D. After a public hearing and to the extent that
14 money is available in the educational technology deficiency
15 correction fund, the bureau shall approve allocations from the
16 fund on the established priority basis and, working with the
17 school district and pursuant to the Procurement Code, enter
18 into contracts to correct the deficiencies.

19 E. No allocation shall be made pursuant to this
20 section unless:

21 (1) the method for prioritizing projects
22 developed by the bureau has been reviewed and approved by the
23 council;

24 (2) the school district has agreed to consult
25 and coordinate with the public school facilities authority

1 before installing any educational technology infrastructure;

2 (3) the council has approved the proposed
3 allocation; and

4 (4) for the 2009 and subsequent fiscal years,
5 the initial assessment required in the Technology for Education
6 Act has been verified by an independent third party as
7 determined in consultation with the public school capital
8 outlay council.

9 [E-] F. In entering into contracts to correct
10 deficiencies pursuant to this section, the bureau shall include
11 such terms and conditions as necessary to ensure that the state
12 money is expended in the most prudent manner possible
13 consistent with the original purpose."

14 Section 2. Section 22-24-4.3 NMSA 1978 (being Laws 2005,
15 Chapter 274, Section 6) is amended to read:

16 "22-24-4.3. ROOF REPAIR AND REPLACEMENT INITIATIVE.--

17 A. The council shall develop guidelines for a roof
18 repair and replacement initiative pursuant to the provisions of
19 this section.

20 B. A school district, desiring a grant award
21 pursuant to this section, shall submit an application to the
22 council. The application shall include an assessment of the
23 roofs on district school buildings that, in the opinion of the
24 school district, create a threat of significant property
25 damage.

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1 C. The public school facilities authority shall
2 verify the assessment made by the school district and rank the
3 application with similar applications pursuant to a methodology
4 adopted by the council.

5 D. After a public hearing and to the extent that
6 money is available in the fund for such purposes, the council
7 shall approve roof repair or replacement projects on the
8 established priority basis; provided that no project shall be
9 approved unless the council determines that the school district
10 is willing and able to pay the portion of the total cost of the
11 project that is not funded with grant assistance from the fund.
12 In order to pay its portion of the total project cost, a school
13 district may use state distributions made to the school
14 district pursuant to the Public School Capital Improvements Act
15 or, if within the scope of the authorizing resolution, proceeds
16 of the property tax imposed pursuant to that act.

17 E. The state share of the cost of an approved
18 project shall be calculated pursuant to the methodology in
19 Paragraph (5) of Subsection B of Section 22-24-5 NMSA 1978.

20 F. A grant made pursuant to this section shall be
21 expended by the school district prior to ~~[September 1, 2008]~~
22 July 1, 2011."

23 Section 3. APPROPRIATION--ROOF REPAIR AND REPLACEMENT.--
24 Thirty million dollars (\$30,000,000) is appropriated from the
25 general fund to the public school capital outlay fund for

.164726.1

1 expenditure in fiscal years 2008 through 2011 for the purpose
2 of making grants to school districts for repairing and
3 replacing roofs pursuant to Section 22-24-4.3 NMSA 1978. Any
4 unexpended or unencumbered balance remaining at the end of
5 fiscal year 2011 shall not revert to the general fund but shall
6 remain in the public school capital outlay fund to be expended
7 pursuant to the Public School Capital Outlay Act.

8 Section 4. APPROPRIATIONS--EDUCATIONAL TECHNOLOGY
9 DEFICIENCIES--UPGRADES.--

10 A. Twenty-seven million dollars (\$27,000,000) is
11 appropriated from the general fund to the educational
12 technology deficiency correction fund for expenditure in fiscal
13 year 2007 and subsequent fiscal years to make allocations to
14 correct serious deficiencies in educational technology
15 infrastructure pursuant to the Technology for Education Act.
16 Any unexpended or unencumbered balance remaining at the end of
17 a fiscal year shall not revert to the general fund.

18 B. Twenty-four million dollars (\$24,000,000) is
19 appropriated from the general fund to the public education
20 department for expenditure in fiscal years 2007 and 2008 to
21 make distributions to school districts to replace functionally
22 obsolete computers and network devices in accordance with the
23 statewide plan for the integration of educational technology
24 into the public schools. Any unexpended or unencumbered
25 balance remaining at the end of fiscal year 2008 shall revert

1 to the general fund.

2 Section 5. APPROPRIATION--PORTABLE FACILITIES.--Eight
3 million dollars (\$8,000,000) is appropriated from the general
4 fund to the public school capital outlay fund for expenditure
5 in fiscal year 2008 and subsequent fiscal years for the purpose
6 of purchasing and installing portable facilities pursuant to
7 Subsection C of Section 22-24-4 NMSA 1978 to be loaned to
8 school districts with a demonstrated need. Any unexpended or
9 unencumbered balance remaining at the end of a fiscal year
10 shall not revert to the general fund.

11 Section 6. APPROPRIATION--CORRECTING DEFICIENCIES AT
12 CERTAIN EDUCATIONAL INSTITUTIONS.--Thirteen million three
13 hundred thousand dollars (\$13,300,000) is appropriated from the
14 general fund to the public school capital outlay fund for
15 expenditure in fiscal year 2008 and subsequent fiscal years for
16 the purpose of correcting outstanding health, safety or
17 infrastructure deficiencies at the New Mexico school for the
18 blind and visually impaired and the New Mexico school for the
19 deaf pursuant to Section 22-24-5.6 NMSA 1978. Any unexpended
20 or unencumbered balance remaining at the end of a fiscal year
21 shall not revert to the general fund.

SENATE BILL

48TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2007

INTRODUCED BY

FOR THE PUBLIC SCHOOL CAPITAL OUTLAY OVERSIGHT TASK FORCE

AN ACT

RELATING TO PUBLIC SCHOOLS; CREATING THE PUBLIC SCHOOL FACILITY
OPPORTUNITY FUND; AUTHORIZING GRANTS FROM THE FUND TO CERTAIN
SCHOOL DISTRICTS FOR CERTAIN PURPOSES; PROVIDING THAT
UNEXPENDED BALANCES OF CERTAIN CAPITAL PROJECT APPROPRIATIONS
SHALL REVERT TO THE FUND; PROVIDING THAT A PORTION OF THE
UNENCUMBERED BALANCE OF CERTAIN GENERAL FUND APPROPRIATIONS
SHALL REVERT TO THE FUND; PROVIDING THAT A PORTION OF EACH
SPECIAL APPROPRIATION FOR A PUBLIC SCHOOL SHALL BE SET ASIDE
AND TRANSFERRED TO THE FUND; PROVIDING FOR A DISTRIBUTION TO
THE FUND OF A PORTION OF GROSS RECEIPTS TAX REVENUE DERIVED
FROM PUBLIC SCHOOL CONSTRUCTION PROJECTS; MAKING AN
APPROPRIATION.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. A new section of the Public School Capital

.164549.2

1 Outlay Act, Section 22-24-12 NMSA 1978, is enacted to read:

2 "22-24-12. [NEW MATERIAL] PUBLIC SCHOOL FACILITY
3 OPPORTUNITY FUND--PURPOSE--GRANTS FROM THE FUND.--

4 A. The legislature finds that, even under the
5 current program to bring all public school facilities up to a
6 minimum statewide adequacy standard, because of a continuing
7 shortage in available local resources, some school districts
8 will not be able to exceed that minimum in the foreseeable
9 future and, therefore, will not have the opportunity to provide
10 their students with the same quality of educational facilities
11 as students in school districts that have sufficient local
12 resources to surpass the minimum standards. The purpose of
13 this section is to provide a program of state support to
14 certain school districts so that their school facilities may,
15 in certain circumstances, exceed the minimum statewide adequacy
16 standard.

17 B. The "public school facility opportunity fund" is
18 created in the state treasury. The fund shall consist of
19 transfers, distributions, appropriations, reversions, gifts,
20 grants, donations and bequests made to the fund. Income from
21 the fund shall be credited to the fund, and money in the fund
22 shall not revert or be transferred to any other fund at the end
23 of a fiscal year. Money in the fund is appropriated to the
24 council for the purposes of making grants so that the
25 facilities of qualifying school districts may, pursuant to the

.164549.2

1 requirements of this section, exceed statewide adequacy
2 standards. Expenditures from the fund shall be made on warrant
3 of the secretary of finance and administration pursuant to
4 vouchers signed by the director of the public school facilities
5 authority.

6 C. A school district may apply for a grant from the
7 public school facility opportunity fund if the council
8 determines that:

9 (1) the school district meets all
10 qualifications to apply for a grant pursuant to Section 22-24-5
11 NMSA 1978;

12 (2) the value calculated for the school
13 district pursuant to Subparagraph (k), (m), (n) or (o) of
14 Paragraph (5) of Subsection B of Section 22-24-5 NMSA 1978 is
15 equal to or greater than seven-tenths;

16 (3) currently and at all times during the
17 previous four years, the school district has a residential
18 property tax rate of at least nine dollars (\$9.00) on each one
19 thousand dollars (\$1,000) of taxable value, as measured by the
20 sum of all rates imposed by resolution of the local school
21 board plus rates set to pay interest and principal on
22 outstanding school district general obligation bonds;

23 (4) at least seventy percent of the students
24 in the school district are eligible for free or reduced-fee
25 lunch; and

.164549.2

1 (5) for the next four years, any local
2 resources of the school district will be expended for the local
3 match required for public school capital outlay projects and,
4 therefore, the school district will have no available local
5 resources to expend on school district facilities for the
6 purpose of exceeding the statewide adequacy standards.

7 D. Applications for grant assistance from the
8 public school facility opportunity fund shall be made by school
9 districts to the council in accordance with the requirements of
10 the council. Using criteria developed by the council, the
11 council shall evaluate applications and prioritize those
12 applications most in need of a grant from the fund. To the
13 extent that money in the fund is available, the council may
14 award grants for those prioritized applications.

15 E. All provisions of the Public School Capital
16 Outlay Act relating to the expenditure of grants awarded from
17 the public school capital outlay fund, including those relating
18 to reporting, oversight, project access and accountability,
19 apply to the use and expenditure of grants made pursuant to
20 this section. In addition, in awarding grants pursuant to this
21 section, the council may require conditions and procedures
22 necessary to ensure that the money is expended in the most
23 prudent manner."

24 Section 2. A new section of the Tax Administration Act is
25 enacted to read:

.164549.2

1 "[NEW MATERIAL] DISTRIBUTION--PUBLIC SCHOOL FACILITY
2 OPPORTUNITY FUND.--A distribution pursuant to Section 7-1-6.1
3 NMSA 1978 shall be made to the public school facility
4 opportunity fund in an amount equal to two percent of the
5 taxable gross receipts attributable to the sale of construction
6 services to school districts or to the public school facilities
7 authority, as determined by the department."

8 Section 3. Section 6-5-10 NMSA 1978 (being Laws 1994,
9 Chapter 11, Section 1, as amended) is amended to read:

10 "6-5-10. STATE AGENCY REVERSIONS--DIRECTOR POWERS--
11 COMPLIANCE WITH FEDERAL RULES.--

12 A. Except as provided in Subsections B and C of
13 this section, all unreserved undesignated fund balances in
14 reverting funds and accounts as reflected in the central
15 financial reporting and accounting system as of June 30 shall
16 revert by September 30 to the general fund. The division may
17 adjust the reversion within forty-five days of release of the
18 audit report for that fiscal year.

19 B. The director of the division may modify a
20 reversion required pursuant to Subsection A of this section if
21 the reversion would violate federal law or rules pertaining to
22 supplanting of state funds with federal funds or other
23 applicable federal provisions.

24 C. One-half of all unreserved undesignated balances
25 in reverting funds and accounts as of the end of each fiscal

1 year from fiscal year 2007 through fiscal year 2011 shall not
2 revert to the general fund but shall be transferred to the
3 public school facility opportunity fund to be used for grants
4 to school districts pursuant to Section 22-24-12 NMSA 1978."

5 Section 4. [NEW MATERIAL] PUBLIC SCHOOL APPROPRIATIONS
6 FOR NONOPERATING PURPOSES--SET ASIDE FOR PUBLIC SCHOOL FACILITY
7 OPPORTUNITY FUND.--Except for appropriations to or from the
8 public school capital outlay fund, two percent of each
9 appropriation made by the legislature on or after July 1, 2007
10 for nonoperating purposes, either directly to a school district
11 or a public school or to another governmental entity for the
12 purpose of passing the money through directly to a school
13 district or a public school, shall be set aside and transferred
14 to the public school facility opportunity fund, provided that
15 the amount set aside and transferred pursuant to this section
16 shall not be included in a reduction in the amount of a state
17 grant calculated pursuant to Paragraph (6) of Subsection B of
18 Section 22-24-5 NMSA 1978. The amount shall be set aside and
19 transferred by the secretary of finance and administration:

20 A. if the appropriation is from severance tax bond
21 proceeds, at the time the severance tax bonds are issued by the
22 state board of finance; or

23 B. if the appropriation is from the general fund,
24 at such time during the first fiscal year that the
25 appropriation may be expended as deemed appropriate by the

1 secretary.

2 Section 5. Laws 2003, Chapter 385, Section 1 is amended
3 to read:

4 "Section 1. GENERAL FUND APPROPRIATIONS FROM FISCAL YEAR
5 2003--LIMITATIONS--REVERSIONS.--

6 A. The general fund appropriations in this act are
7 from fiscal year 2003 and may be expended through fiscal year
8 2008 except as otherwise provided in this section.

9 B. Unless otherwise provided, the unexpended
10 balance of an appropriation made in this act from the general
11 fund, including changes to prior appropriations, shall revert
12 ~~[to the originating fund, as follows]~~ according to the
13 following schedule. Unless otherwise provided, the reversion
14 shall be made to the originating fund, except that, on or after
15 July 1, 2007, a reversion of a general fund appropriation that
16 would otherwise revert to the general fund shall not be made to
17 the general fund but shall be made to the public school
18 facility opportunity fund and shall be used for grants to
19 school districts pursuant to Section 22-24-12 NMSA 1978:

20 (1) for projects for which appropriations were
21 made to match federal grants, six months after completion of
22 the project;

23 (2) for projects for which appropriations were
24 made to purchase vehicles, heavy equipment, educational
25 technology or equipment or furniture that is not related to a

.164549.2

1 more inclusive construction or renovation project, at the end
2 of the fiscal year following the fiscal year in which the
3 appropriation was made for the purchase;

4 (3) for projects for which appropriations were
5 made to purchase emergency vehicles or other vehicles that
6 require special equipment, at the end of the fiscal year two
7 years following the fiscal year in which the [~~severance tax~~
8 ~~bonds were issued~~] appropriation was made for the purchase; and

9 (4) for all other projects for which
10 appropriations were made, within six months of completion of
11 the project, but no later than the end of fiscal year 2008.

12 C. Except for appropriations to the capital program
13 fund, money from appropriations made in this act shall not be
14 used to pay indirect project costs.

15 D. For the purpose of this section, "unexpended
16 balance" means the remainder of an appropriation after
17 reserving for unpaid costs and expenses covered by binding
18 written obligations to third parties."

19 Section 6. Laws 2003, Chapter 429, Section 2 is amended
20 to read:

21 "Section 2. GENERAL FUND AND OTHER FUND APPROPRIATIONS--
22 LIMITATIONS--REVERSIONS.--

23 A. The general fund appropriations in this act are
24 from fiscal year 2003 and may be expended through fiscal year
25 2008 except as otherwise provided in this section.

1 B. Unless otherwise provided, the unexpended
2 balance of an appropriation made in this act from the general
3 fund or other state fund, including changes to prior
4 appropriations, shall revert ~~[to the originating fund, as~~
5 ~~follows]~~ according to the following schedule. Unless otherwise
6 provided, the reversion shall be made to the originating fund,
7 except that, on or after July 1, 2007, a reversion of a general
8 fund appropriation that would otherwise revert to the general
9 fund shall not be made to the general fund but shall be made to
10 the public school facility opportunity fund and shall be used
11 for grants to school districts pursuant to Section 22-24-12
12 NMSA 1978:

13 (1) for projects for which appropriations were
14 made to match federal grants, six months after completion of
15 the project;

16 (2) for projects for which appropriations were
17 made to purchase vehicles, heavy equipment, educational
18 technology or equipment or furniture that is not related to a
19 more inclusive construction or renovation project, at the end
20 of the fiscal year following the fiscal year in which the
21 appropriation was made for the purchase;

22 (3) for projects for which appropriations were
23 made to purchase emergency vehicles or other vehicles that
24 require special equipment, at the end of the fiscal year two
25 years following the fiscal year in which the ~~[severance tax~~

1 ~~bonds were issued]~~ appropriation was made for the purchase; and

2 (4) for all other projects for which
3 appropriations were made, within six months of completion of
4 the project, but no later than the end of fiscal year 2008.

5 C. Except for appropriations to the capital program
6 fund, money from appropriations made in this act shall not be
7 used to pay indirect project costs.

8 D. For the purpose of this section, "unexpended
9 balance" means the remainder of an appropriation after
10 reserving for unpaid costs and expenses covered by binding
11 written obligations to third parties."

12 Section 7. Laws 2004, Chapter 126, Section 2 is amended
13 to read:

14 "Section 2. GENERAL FUND AND OTHER FUND APPROPRIATIONS--
15 LIMITATIONS--REVERSIONS.--

16 A. Except as otherwise provided in this section,
17 [~~or~~] another section of this act or another law, the unexpended
18 balance of an appropriation made in this act from the general
19 fund or other state fund, including changes to prior
20 appropriations, shall revert [~~to the originating fund, as~~
21 ~~follows~~] according to the following schedule. Unless otherwise
22 provided, the reversion shall be made to the originating fund,
23 except that, on or after July 1, 2007, a reversion of a general
24 fund appropriation that would otherwise revert to the general
25 fund shall not be made to the general fund but shall be made to

1 the public school facility opportunity fund and shall be used
2 for grants to school districts pursuant to Section 22-24-12
3 NMSA 1978:

4 (1) for projects for which appropriations were
5 made to match federal grants, six months after completion of
6 the project;

7 (2) for projects for which appropriations were
8 made to purchase vehicles, heavy equipment, educational
9 technology or equipment or furniture that is not related to a
10 more inclusive construction or renovation project, at the end
11 of the fiscal year following the fiscal year in which the
12 appropriation was made for the purchase;

13 (3) for projects for which appropriations were
14 made to purchase emergency vehicles or other vehicles that
15 require special equipment, at the end of the fiscal year two
16 years following the fiscal year in which the severance tax
17 bonds were issued for the purchase; and

18 (4) for all other projects for which
19 appropriations were made, within six months of completion of
20 the project, but no later than the end of fiscal year 2009.

21 B. Except for appropriations to the capital program
22 fund, money from appropriations made in this act shall not be
23 used to pay indirect project costs.

24 C. For the purpose of this section, "unexpended
25 balance" means the remainder of an appropriation after

1 reserving for unpaid costs and expenses covered by binding
2 written obligations to third parties."

3 Section 8. Laws 2005, Chapter 347, Section 2 is amended
4 to read:

5 "Section 2. GENERAL FUND AND OTHER FUND APPROPRIATIONS--
6 LIMITATIONS--REVERSIONS.--

7 A. Except as otherwise provided in this section,
8 [~~or~~] another section of this act or another law, the unexpended
9 balance of an appropriation made in this act from the general
10 fund or other state fund, including changes to prior
11 appropriations, shall revert [~~to the originating fund, as~~
12 ~~follows~~] according to the following schedule. Unless otherwise
13 provided, the reversion shall be made to the originating fund,
14 except that, on or after July 1, 2007, a reversion of a general
15 fund appropriation that would otherwise revert to the general
16 fund shall not be made to the general fund but shall be made to
17 the public school facility opportunity fund and shall be used
18 for grants to school districts pursuant to Section 22-24-12
19 NMSA 1978:

20 (1) for projects for which appropriations were
21 made to match federal grants, six months after completion of
22 the project;

23 (2) for projects for which appropriations were
24 made to purchase vehicles, heavy equipment, educational
25 technology or equipment or furniture that is not related to a

1 more inclusive construction or renovation project, at the end
2 of the fiscal year following the fiscal year in which the
3 appropriation was made for the purchase;

4 (3) for projects for which appropriations were
5 made to purchase emergency vehicles or other vehicles that
6 require special equipment, at the end of the fiscal year two
7 years following the fiscal year in which the severance tax
8 bonds were issued for the purchase; and

9 (4) for all other projects for which
10 appropriations were made, within six months of completion of
11 the project, but no later than the end of fiscal year 2010.

12 B. Except for appropriations to the capital program
13 fund, money from appropriations made in this act shall not be
14 used to pay indirect project costs.

15 C. For the purpose of this section, "unexpended
16 balance" means the remainder of an appropriation after
17 reserving for unpaid costs and expenses covered by binding
18 written obligations to third parties."

19 Section 9. Laws 2006, Chapter 107, Section 2 is amended
20 to read:

21 "Section 2. GENERAL FUND AND OTHER FUND APPROPRIATIONS--
22 LIMITATIONS--REVERSIONS.--

23 A. Except as otherwise provided in another section
24 of this act or another law, the unexpended balance of an
25 appropriation from the general fund or other state fund that

.164549.2

1 has been changed in this act shall revert ~~[to the originating~~
2 ~~fund, as follows]~~ according to the following schedule. Unless
3 otherwise provided, the reversion shall be made to the
4 originating fund, except that, on or after July 1, 2007, a
5 reversion of a general fund appropriation that would otherwise
6 revert to the general fund shall not be made to the general
7 fund but shall be made to the public school facility
8 opportunity fund and shall be used for grants to school
9 districts pursuant to Section 22-24-12 NMSA 1978:

10 (1) for projects for which appropriations were
11 made to match federal grants, six months after completion of
12 the project;

13 (2) for projects for which appropriations were
14 made to purchase vehicles, including emergency vehicles and
15 other vehicles that require special equipment; heavy equipment;
16 educational technology; or equipment or furniture that is not
17 related to a more inclusive construction or renovation project,
18 at the end of the fiscal year two years following the fiscal
19 year in which the appropriation was made for the purchase; and

20 (3) for all other projects for which
21 appropriations were made, within six months of completion of
22 the project, but no later than the end of fiscal year 2009.

23 B. For the purpose of this section, "unexpended
24 balance" means the remainder of an appropriation after
25 reserving for unpaid costs and expenses covered by binding

1 written obligations to third parties."

2 Section 10. Laws 2006, Chapter 111, Section 2 is amended
3 to read:

4 "Section 2. GENERAL FUND AND OTHER FUND APPROPRIATIONS--
5 LIMITATIONS--REVERSIONS.--

6 A. Except as otherwise provided in this section,
7 ~~[or]~~ another section of this act or another law, the unexpended
8 balance of an appropriation made in this act from the general
9 fund or other state fund, including changes to prior
10 appropriations, shall revert ~~[to the originating fund, as~~
11 ~~follows]~~ according to the following schedule. Unless otherwise
12 provided, the reversion shall be made to the originating fund,
13 except that, on or after July 1, 2007, a reversion of a general
14 fund appropriation that would otherwise revert to the general
15 fund shall not be made to the general fund but shall be made to
16 the public school facility opportunity fund and shall be used
17 for grants to school districts pursuant to Section 22-24-12
18 NMSA 1978:

19 (1) for projects for which appropriations were
20 made to match federal grants, six months after completion of
21 the project;

22 (2) for projects for which appropriations were
23 made to purchase vehicles, emergency vehicles or other vehicles
24 that require special equipment, heavy equipment, educational
25 technology or equipment or furniture that is not related to a

1 more inclusive construction or renovation project, at the end
2 of the fiscal year two years following the fiscal year in which
3 the appropriation was made for the purchase; and

4 (3) for all other projects for which
5 appropriations were made, within six months of completion of
6 the project, but no later than the end of fiscal year 2010.

7 B. Upon certification by an agency that money from
8 the general fund is needed for a purpose specified in this act,
9 the secretary of finance and administration shall disburse
10 [~~such~~] an amount of the appropriation for that project as is
11 necessary to meet that need.

12 C. Except for appropriations to the capital program
13 fund, money from appropriations made in this act shall not be
14 used to pay indirect project costs.

15 D. For the purpose of this section, "unexpended
16 balance" means the remainder of an appropriation after
17 reserving for unpaid costs and expenses covered by binding
18 written obligations to third parties."

19 Section 11. Laws 2006, Chapter 109, Section 3 is amended
20 to read:

21 "Section 3. GENERAL PROVISIONS.--

22 A. Amounts set out under column headings are
23 expressed in thousands of dollars.

24 B. Amounts set out under column headings are
25 appropriated from the source indicated by the column heading.

1 All amounts set out under the column heading "Internal Service
2 Funds/Interagency Transfers" are intergovernmental transfers
3 and do not represent a portion of total state government
4 appropriations. All information designated as "Total" or
5 "Subtotal" is provided for information and amounts are not
6 appropriations.

7 C. Amounts set out in Section 4 of the General
8 Appropriation Act of 2006, or so much as may be necessary, are
9 appropriated from the indicated source for expenditure in
10 fiscal year 2007 for the objects expressed.

11 D. Unencumbered balances in agency accounts
12 remaining at the end of fiscal year 2006 shall revert to the
13 general fund by October 1, 2006, unless otherwise indicated in
14 the General Appropriation Act of 2006 or otherwise provided by
15 law.

16 E. ~~[Unencumbered balances in agency accounts~~
17 ~~remaining at the end of fiscal year 2007 shall revert to the~~
18 ~~general fund by October 1, 2007]~~ Unless otherwise indicated in
19 the General Appropriation Act of 2006 or otherwise provided by
20 law, by October 1, 2007, fifty percent of the unencumbered
21 balances in agency accounts remaining at the end of fiscal year
22 2007 shall revert to the general fund and the remaining
23 unencumbered balances shall be transferred to the public school
24 facility opportunity fund.

25 F. The state budget division shall monitor revenue

1 received by agencies from sources other than the general fund
2 and shall reduce the operating budget of any agency whose
3 revenue from such sources is not meeting projections. The
4 state budget division shall notify the legislative finance
5 committee of any operating budget reduced pursuant to this
6 subsection.

7 G. Except as otherwise specifically stated in the
8 General Appropriation Act of 2006, appropriations are made in
9 that act for the expenditures of agencies and for other
10 purposes as required by existing law for fiscal year 2007. If
11 any other act of the second session of the forty-seventh
12 legislature changes existing law with regard to the name or
13 responsibilities of an agency or the name or purpose of a fund
14 or distribution, the appropriation made in the General
15 Appropriation Act of 2006 shall be transferred from the agency,
16 fund or distribution to which an appropriation has been made as
17 required by existing law to the appropriate agency, fund or
18 distribution provided by the new law.

19 H. The department of finance and administration
20 will regularly consult with the legislative finance committee
21 staff to compare fiscal year 2007 revenue collections with the
22 revenue estimate. If the analyses indicate that revenues and
23 transfers to the general fund are not expected to meet
24 appropriations, then the department shall present a plan to the
25 legislative finance committee that outlines the methods by

1 which the administration proposes to address the deficit.

2 I. Pursuant to Sections 6-3-23 through 6-3-25 NMSA
3 1978, agencies whose revenue from state board of finance loans,
4 from revenue appropriated by other acts of the legislature, or
5 from gifts, grants, donations, bequests, insurance settlements,
6 refunds or payments into revolving funds exceeds specifically
7 appropriated amounts may request budget increases from the
8 state budget division. If approved by the state budget
9 division, such money is appropriated.

10 ~~[H.]~~ J. Except for gasoline credit cards used
11 solely for operation of official vehicles, telephone credit
12 cards used solely for official business and procurement cards
13 used as authorized by Section 6-5-9.1 NMSA 1978, none of the
14 appropriations contained in the General Appropriation Act of
15 2006 may be expended for payment of agency-issued credit card
16 invoices.

17 ~~[M.]~~ K. To prevent unnecessary spending,
18 expenditures from the General Appropriation Act of 2006 for
19 gasoline for state-owned vehicles at public gasoline service
20 stations shall be made only for self-service gasoline provided
21 that a state agency head may provide exceptions from the
22 requirement to accommodate disabled persons or for other
23 reasons the public interest may require.

24 ~~[N.]~~ L. For the purpose of administering the
25 General Appropriation Act of 2006, the state of New Mexico

1 shall follow the modified accrual basis of accounting for
2 governmental funds in accordance with the manual of model
3 accounting practices issued by the department of finance and
4 administration.

5 [Θ-] M. When approving budgets based on
6 appropriations in the General Appropriation Act of 2006, the
7 state budget division is specifically authorized to approve
8 budgets in accordance with generally accepted accounting
9 principles and the authority to extend the availability period
10 of an appropriation through the use of an encumbrance shall
11 follow the modified accrual basis of accounting for
12 governmental funds in accordance with the manual of model
13 accounting practices issued by the department of finance and
14 administration."

15 Section 12. EFFECTIVE DATE.--The effective date of the
16 provisions of Section 2 of this act is July 1, 2007.

underscored material = new
[bracketed material] = delete

SENATE BILL

48TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2007

INTRODUCED BY

FOR THE PUBLIC SCHOOL CAPITAL OUTLAY OVERSIGHT TASK FORCE

AN ACT

RELATING TO PUBLIC SCHOOLS; AUTHORIZING REVENUE BONDS FOR THE
PURPOSE OF PROVIDING THE MATCH REQUIRED FOR GRANTS TO STATE-
CHARTERED CHARTER SCHOOLS PURSUANT TO THE PUBLIC SCHOOL CAPITAL
OUTLAY ACT; CREATING THE CHARTER SCHOOL BONDING FUND; PROVIDING
FOR DISTRIBUTIONS OF GROSS RECEIPTS TAX REVENUE AND CERTAIN
DISTRIBUTIONS PURSUANT TO THE PUBLIC SCHOOL CAPITAL
IMPROVEMENTS ACT TO THE FUND; AUTHORIZING AN ADDITIONAL
PROPERTY TAX LEVY TO BE APPROVED BY THE VOTERS PURSUANT TO THE
PUBLIC SCHOOL CAPITAL IMPROVEMENTS ACT; MAKING AN
APPROPRIATION.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. A new section of the Tax Administration Act is
enacted to read:

"[NEW MATERIAL] DISTRIBUTION--CHARTER SCHOOL BONDING

.164547.3

1 FUND--GROSS RECEIPTS TAX.--A distribution pursuant to Section
2 7-1-6.1 NMSA 1978 shall be made to the charter school bonding
3 fund from the net receipts attributable to the gross receipts
4 tax imposed by the Gross Receipts and Compensating Tax Act in
5 an amount necessary, as determined by the New Mexico finance
6 authority, to make the required debt service payments on
7 charter school bonds issued pursuant to the Charter Schools Act
8 and the New Mexico Finance Authority Act. The distribution
9 shall be made:

10 A. after the required distribution pursuant to
11 Section 7-1-6.4 NMSA 1978;

12 B. contemporaneously with other distributions of
13 net receipts attributable to the gross receipts tax for payment
14 of debt service on outstanding bonds or to a fund dedicated for
15 that purpose; and

16 C. prior to any other distribution of net receipts
17 attributable to the gross receipts tax."

18 Section 2. A new section of the Charter Schools Act is
19 enacted to read:

20 "[NEW MATERIAL] CHARTER SCHOOL BONDS AUTHORIZED--
21 CONDITIONS--PROCEDURE.--

22 A. The New Mexico finance authority is authorized
23 to issue and sell from time to time revenue bonds, known as
24 "charter school bonds", in an amount outstanding at any one
25 time not to exceed twenty million dollars (\$20,000,000),

.164547.3

1 payable solely from the charter school bonding fund, in
2 compliance with the Charter Schools Act and the New Mexico
3 Finance Authority Act for the purpose of providing funding for
4 the capital needs of state-chartered charter schools as
5 determined pursuant to the Public School Capital Outlay Act.
6 The bonds may be issued when the division has certified the
7 need for the bonds and the conditions of Subsection C of this
8 section have been satisfied.

9 B. The net proceeds from the bonds are appropriated
10 to the division for the purpose of providing the share of the
11 cost of a capital outlay project for a state-chartered charter
12 school that is not funded from the public school capital outlay
13 fund.

14 C. Bonds shall not be issued pursuant to this
15 section unless:

16 (1) a state-chartered charter school has
17 applied for grant assistance pursuant to the Public School
18 Capital Outlay Act;

19 (2) the public school capital outlay council
20 has awarded a grant to the state-chartered charter school from
21 the public school capital outlay fund contingent upon the
22 issuance of charter school bonds to provide the share of the
23 project cost that will not be funded from the public school
24 capital outlay fund; and

25 (3) the division has determined that the

1 state-chartered charter school has no other available money to
2 use for the capital outlay project.

3 D. Each series of bonds shall be issued pursuant to
4 the provisions of the New Mexico Finance Authority Act, except
5 as otherwise provided in the Charter Schools Act or the Public
6 School Capital Outlay Act."

7 Section 3. A new section of the Charter Schools Act is
8 enacted to read:

9 "[NEW MATERIAL] CHARTER SCHOOL BONDING FUND--PLEDGE OF
10 MONEY IN THE FUND.--

11 A. The "charter school bonding fund" is created as
12 a special fund within the New Mexico finance authority. The
13 fund shall be administered by the New Mexico finance authority
14 as a special account. The fund shall consist of gross receipts
15 tax revenues distributed to the fund by law, money distributed
16 to the fund pursuant to the provisions of the Public School
17 Capital Improvements Act and other transfers and appropriations
18 made to the fund. Earnings of the fund shall be credited to
19 the fund.

20 B. Money in the charter school bonding fund shall
21 be pledged irrevocably by the New Mexico finance authority for
22 the payment of principal and interest on all charter school
23 bonds issued pursuant to the Charter Schools Act and the New
24 Mexico Finance Authority Act. Money in the fund is
25 appropriated to the New Mexico finance authority for the

.164547.3

1 purpose of paying debt service, including redemption premiums,
2 on the bonds and the expenses incurred in the issuance, payment
3 and administration of the bonds.

4 C. On the last day of January and July of each
5 year, the New Mexico finance authority shall estimate the
6 amount needed to make debt service payments on the charter
7 school bonds issued pursuant to the Charter Schools Act and the
8 New Mexico Finance Authority Act plus the amount that may be
9 needed for any required reserves, administrative expenses or
10 other obligations coming due during the next twelve months from
11 the charter school bonding fund. If the balance in the fund
12 exceeds the amount needed, an amount shall be transferred to
13 the general fund, equal to the lesser of:

14 (1) the excess amount in the fund; or

15 (2) the total distributions of gross receipts
16 tax revenue previously made to the fund minus the total of
17 previous transfers to the general fund pursuant to this
18 subsection.

19 D. Charter school bonds issued pursuant to the
20 Charter Schools Act and the New Mexico Finance Authority Act
21 shall be payable solely from the charter school bonding fund or
22 such other special funds as may be provided by law and do not
23 create an obligation or indebtedness of the state within the
24 meaning of any constitutional provision. A breach of any
25 contractual obligation incurred pursuant to those acts shall

1 not impose a pecuniary liability or a charge upon the general
2 credit or taxing power of the state, and the bonds are not
3 general obligations for which the state's full faith and credit
4 are pledged.

5 E. The state does hereby pledge that the charter
6 school bonding fund shall be used only for the purposes
7 specified in this section and pledged first to pay the debt
8 service on the charter school bonds. The state further pledges
9 that any law authorizing the distribution of taxes or other
10 revenues to the fund or authorizing expenditures from the fund
11 shall not be amended or repealed or otherwise modified so as to
12 impair the bonds to which the fund is dedicated as provided in
13 this section."

14 Section 4. A new section of the Charter Schools Act is
15 enacted to read:

16 "[NEW MATERIAL] CHARTER SCHOOL BONDS--FULL AUTHORITY TO
17 ISSUE--BONDS ARE LEGAL INVESTMENTS.--

18 A. The Charter Schools Act and the New Mexico
19 Finance Authority Act shall, without reference to any other act
20 of the legislature, be the full authority for the issuance and
21 sale of charter school bonds, which bonds shall have all the
22 qualities of investment securities under the Uniform Commercial
23 Code and shall not be invalid for any irregularity or defect or
24 be contestable in the hands of bona fide purchasers or holders
25 of the bonds for value.

1 B. Charter school bonds are legal investments for
2 any person or board charged with the investment of any public
3 funds and are acceptable as security for any deposit of public
4 money."

5 Section 5. A new section of the Charter Schools Act is
6 enacted to read:

7 "[NEW MATERIAL] BONDS TAX EXEMPT.--All charter school
8 bonds shall be exempt from taxation by the state or any of its
9 political subdivisions."

10 Section 6. Section 22-24-5 NMSA 1978 (being Laws 1975,
11 Chapter 235, Section 5, as amended) is amended to read:

12 "22-24-5. PUBLIC SCHOOL CAPITAL OUTLAY PROJECTS--
13 APPLICATION--GRANT ASSISTANCE.--

14 A. Applications for grant assistance, the approval
15 of applications, the prioritization of projects and grant
16 awards shall be conducted pursuant to the provisions of this
17 section.

18 B. Except as provided in Sections 22-24-4.3,
19 22-24-5.4, ~~[and]~~ 22-24-5.6 and 22-24-5.8 NMSA 1978, the
20 following provisions govern grant assistance from the fund for
21 a public school capital outlay project not wholly funded
22 pursuant to Section 22-24-4.1 NMSA 1978:

23 (1) all school districts are eligible to apply
24 for funding from the fund, regardless of percentage of
25 indebtedness;

1 (2) priorities for funding shall be determined
2 by using the statewide adequacy standards developed pursuant to
3 Subsection C of this section; provided that:

4 (a) the council shall apply the
5 standards to charter schools to the same extent that they are
6 applied to other public schools; and

7 (b) in an emergency in which the health
8 or safety of students or school personnel is at immediate risk
9 or in which there is a threat of significant property damage,
10 the council may award grant assistance for a project using
11 criteria other than the statewide adequacy standards;

12 (3) the council shall establish criteria to be
13 used in public school capital outlay projects that receive
14 grant assistance pursuant to the Public School Capital Outlay
15 Act. In establishing the criteria, the council shall consider:

16 (a) the feasibility of using design,
17 build and finance arrangements for public school capital outlay
18 projects;

19 (b) the potential use of more durable
20 construction materials that may reduce long-term operating
21 costs; and

22 (c) any other financing or construction
23 concept that may maximize the dollar effect of the state grant
24 assistance;

25 (4) no more than ten percent of the combined

1 total of grants in a funding cycle shall be used for
2 retrofitting existing facilities for technology infrastructure;

3 (5) except as provided in Paragraph (6) or (8)
4 of this subsection, the state share of a project approved and
5 ranked by the council shall be funded within available
6 resources pursuant to the provisions of this paragraph. No
7 later than May 1 of each calendar year, a value shall be
8 calculated for each school district in accordance with the
9 following procedure:

10 (a) the final prior year net taxable
11 value for a school district divided by the MEM for that school
12 district is calculated for each school district;

13 (b) the final prior year net taxable
14 value for the whole state divided by the MEM for the state is
15 calculated;

16 (c) excluding any school district for
17 which the result calculated pursuant to Subparagraph (a) of
18 this paragraph is more than twice the result calculated
19 pursuant to Subparagraph (b) of this paragraph, the results
20 calculated pursuant to Subparagraph (a) of this paragraph are
21 listed from highest to lowest;

22 (d) the lowest value listed pursuant to
23 Subparagraph (c) of this paragraph is subtracted from the
24 highest value listed pursuant to that subparagraph;

25 (e) the value calculated pursuant to
26 .164547.3

1 Subparagraph (a) of this paragraph for the subject school
2 district is subtracted from the highest value listed in
3 Subparagraph (c) of this paragraph;

4 (f) the result calculated pursuant to
5 Subparagraph (e) of this paragraph is divided by the result
6 calculated pursuant to Subparagraph (d) of this paragraph;

7 (g) the sum of the property tax mill
8 levies for the prior tax year imposed by each school district
9 on residential property pursuant to Chapter 22, Article 18 NMSA
10 1978, the Public School Capital Improvements Act, the Public
11 School Buildings Act, the Education Technology Equipment Act
12 and Paragraph (2) of Subsection B of Section 7-37-7 NMSA 1978
13 is calculated for each school district;

14 (h) the lowest value calculated pursuant
15 to Subparagraph (g) of this paragraph is subtracted from the
16 highest value calculated pursuant to that subparagraph;

17 (i) the lowest value calculated pursuant
18 to Subparagraph (g) of this paragraph is subtracted from the
19 value calculated pursuant to that subparagraph for the subject
20 school district;

21 (j) the value calculated pursuant to
22 Subparagraph (i) of this paragraph is divided by the value
23 calculated pursuant to Subparagraph (h) of this paragraph;

24 (k) if the value calculated for a
25 subject school district pursuant to Subparagraph (j) of this

.164547.3

1 paragraph is less than five-tenths, then, except as provided in
2 Subparagraph (n) or (o) of this paragraph, the value for that
3 school district equals the value calculated pursuant to
4 Subparagraph (f) of this paragraph;

5 (l) if the value calculated for a
6 subject school district pursuant to Subparagraph (j) of this
7 paragraph is five-tenths or greater, then that value is
8 multiplied by five-hundredths;

9 (m) if the value calculated for a
10 subject school district pursuant to Subparagraph (j) of this
11 paragraph is five-tenths or greater, then the value calculated
12 pursuant to Subparagraph (l) of this paragraph is added to the
13 value calculated pursuant to Subparagraph (f) of this
14 paragraph. Except as provided in Subparagraph (n) or (o) of
15 this paragraph, the sum equals the value for that school
16 district;

17 (n) in those instances in which the
18 calculation pursuant to Subparagraph (k) or (m) of this
19 paragraph yields a value less than one-tenth, one-tenth shall
20 be used as the value for the subject school district;

21 (o) in those instances in which the
22 calculation pursuant to Subparagraph (k) or (m) of this
23 paragraph yields a value greater than one, one shall be used as
24 the value for the subject school district;

25 (p) except as provided in Section

1 22-24-5.7 NMSA 1978 and except as reduced pursuant to Paragraph
2 (6) of this subsection, the amount to be distributed from the
3 fund for an approved project shall equal the total project cost
4 multiplied by a fraction, the numerator of which is the value
5 calculated for the subject school district in the current year
6 plus the value calculated for that school district in each of
7 the two preceding years and the denominator of which is three;
8 and

9 (q) as used in this paragraph: 1) "MEM"
10 means the average full-time-equivalent enrollment of students
11 attending public school in a school district on the eightieth
12 and one hundred twentieth days of the prior school year; and 2)
13 "total project cost" means the total amount necessary to
14 complete the public school capital outlay project less any
15 insurance reimbursement received by the school district for the
16 project;

17 (6) the amount calculated pursuant to
18 Subparagraph (p) of Paragraph (5) of this subsection shall be
19 reduced by the following procedure:

20 (a) the total of all legislative
21 appropriations made after January 1, 2003 for nonoperating
22 purposes either directly to the subject school district or to
23 another governmental entity for the purpose of passing the
24 money through directly to the subject school district, and not
25 rejected by the subject school district, but excluding

1 educational technology appropriations made prior to January 1,
2 2005 and reauthorizations of appropriations previously made to
3 the subject school district, is calculated; provided that an
4 appropriation made in a fiscal year shall be deemed to be
5 accepted by a school district unless, prior to June 1 of that
6 fiscal year, the school district notifies the department of
7 finance and administration and the public education department
8 that the district is rejecting the appropriation; provided
9 further that the total shall be increased by an amount,
10 certified to the council by the department, equal to the
11 educational technology appropriations made to the subject
12 school district on or after January 1, 2003 and prior to
13 January 1, 2005 and not previously used to offset distributions
14 pursuant to the Technology for Education Act;

15 (b) the applicable fraction used for the
16 subject school district and the current calendar year for the
17 calculation in Subparagraph (p) of Paragraph (5) of this
18 subsection is subtracted from one;

19 (c) the value calculated pursuant to
20 Subparagraph (a) of this paragraph for the subject school
21 district is multiplied by the amount calculated pursuant to
22 Subparagraph (b) of this paragraph for that school district;

23 (d) the total amount of reductions for
24 the subject school district previously made pursuant to
25 Subparagraph (e) of this paragraph for other approved public

1 school capital outlay projects is subtracted from the amount
2 calculated pursuant to Subparagraph (c) of this paragraph; and

3 (e) the amount calculated pursuant to
4 Subparagraph (p) of Paragraph (5) of this subsection shall be
5 reduced by the amount calculated pursuant to Subparagraph (d)
6 of this paragraph;

7 (7) as used in Paragraphs (5) and (6) of this
8 subsection, "subject school district" means the school district
9 that has submitted the application for funding and in which the
10 approved public school capital outlay project will be located;

11 (8) the council may adjust the amount of local
12 share otherwise required if it determines that a school
13 district has used all of its local resources. Before making
14 any adjustment to the local share, the council shall consider
15 whether:

16 (a) the school district has insufficient
17 bonding capacity over the next four years to provide the local
18 match necessary to complete the project and, for all
19 educational purposes, has a residential property tax rate of at
20 least ten dollars (\$10.00) on each one thousand dollars
21 (\$1,000) of taxable value, as measured by the sum of all rates
22 imposed by resolution of the local school board plus rates set
23 to pay interest and principal on outstanding school district
24 general obligation bonds;

25 (b) the school district: 1) has fewer
26 .164547.3

1 than an average of eight hundred full-time-equivalent students
2 on the eightieth and one hundred twentieth days of the prior
3 school year; 2) has at least seventy percent of its students
4 eligible for free or reduced-fee lunch; 3) has a share of the
5 total project cost, as calculated pursuant to provisions of
6 this section, that would be greater than fifty percent; and 4)
7 for all educational purposes, has a residential property tax
8 rate of at least seven dollars (\$7.00) on each one thousand
9 dollars (\$1,000) of taxable value, as measured by the sum of
10 all rates imposed by resolution of the local school board plus
11 rates set to pay interest and principal on outstanding school
12 district general obligation bonds; or

13 (c) the school district has: 1) an
14 enrollment growth rate over the previous school year of at
15 least two and one-half percent; 2) pursuant to its five-year
16 facilities plan, will be building a new school within the next
17 two years; and 3) for all educational purposes, has a
18 residential property tax rate of at least ten dollars (\$10.00)
19 on each one thousand dollars (\$1,000) of taxable value, as
20 measured by the sum of all rates imposed by resolution of the
21 local school board plus rates set to pay interest and principal
22 on outstanding school district general obligation bonds; and

23 (9) no application for grant assistance from
24 the fund shall be approved unless the council determines that:

25 (a) the public school capital outlay

1 project is needed and included in the school district's
2 five-year facilities plan among its top priorities;

3 (b) the school district has used its
4 capital resources in a prudent manner;

5 (c) the school district has provided
6 insurance for buildings of the school district in accordance
7 with the provisions of Section 13-5-3 NMSA 1978;

8 (d) the school district has submitted a
9 five-year facilities plan that includes: 1) enrollment
10 projections; 2) a current preventive maintenance plan that has
11 been approved by the council pursuant to Section 22-24-5.3 NMSA
12 1978 and that is followed by each public school in the
13 district; 3) the capital needs of charter schools located in
14 the school district; and 4) projections for the facilities
15 needed in order to maintain a full-day kindergarten program;

16 (e) the school district is willing and
17 able to pay any portion of the total cost of the public school
18 capital outlay project that, according to Paragraph (5), (6) or
19 (8) of this subsection, is not funded with grant assistance
20 from the fund; provided that school district funds used for a
21 project that was initiated after September 1, 2002 when the
22 statewide adequacy standards were adopted, but before September
23 1, 2004 when the standards were first used as the basis for
24 determining the state and school district share of a project,
25 may be applied to the school district portion required for that

1 project;

2 (f) the application includes the capital
3 needs of any charter school located in the school district or
4 the school district has shown that the facilities of the
5 charter school have a smaller deviation from the statewide
6 adequacy standards than other district facilities included in
7 the application; and

8 (g) the school district has agreed, in
9 writing, to comply with any reporting requirements or
10 conditions imposed by the council pursuant to Section 22-24-5.1
11 NMSA 1978.

12 C. After consulting with the public school capital
13 outlay oversight task force and other experts, the council
14 shall regularly review and update statewide adequacy standards
15 applicable to all school districts. The standards shall
16 establish the acceptable level for the physical condition and
17 capacity of buildings, the educational suitability of
18 facilities and the need for technological infrastructure.
19 Except as otherwise provided in the Public School Capital
20 Outlay Act, the amount of outstanding deviation from the
21 standards shall be used by the council in evaluating and
22 prioritizing public school capital outlay projects.

23 D. It is the intent of the legislature that grant
24 assistance made pursuant to this section allows every school
25 district to meet the standards developed pursuant to Subsection
.164547.3

1 C of this section; provided, however, that nothing in the
2 Public School Capital Outlay Act or the development of
3 standards pursuant to that act prohibits a school district from
4 using local funds to exceed the statewide adequacy standards.

5 E. Upon request, the council shall work with, and
6 provide assistance and information to, the public school
7 capital outlay oversight task force.

8 F. The council may establish committees or task
9 forces, not necessarily consisting of council members, and may
10 use the committees or task forces, as well as existing agencies
11 or organizations, to conduct studies, conduct surveys, submit
12 recommendations or otherwise contribute expertise from the
13 public schools, programs, interest groups and segments of
14 society most concerned with a particular aspect of the
15 council's work.

16 G. Upon the recommendation of the public school
17 facilities authority, the council shall develop building
18 standards for public school facilities and shall promulgate
19 other such rules as are necessary to carry out the provisions
20 of the Public School Capital Outlay Act.

21 H. No later than December 15 of each year, the
22 council shall prepare a report summarizing its activities
23 during the previous fiscal year. The report shall describe in
24 detail all projects funded, the progress of projects previously
25 funded but not completed, the criteria used to prioritize and

1 fund projects and all other council actions. The report shall
2 be submitted to the public education commission, the governor,
3 the legislative finance committee, the legislative education
4 study committee and the legislature."

5 Section 7. A new section of the Public School Capital
6 Outlay Act, Section 22-24-5.8 NMSA 1978, is enacted to read:

7 "22-24-5.8. [NEW MATERIAL] PROCEDURES FOR A STATE-
8 CHARTERED CHARTER SCHOOL.--A state-chartered charter school may
9 apply for grant assistance for a capital project pursuant to
10 the Public School Capital Outlay Act. All of the provisions of
11 that act apply to such an application except:

12 A. the portion of the cost of the project to be
13 paid from the fund shall be calculated pursuant to Paragraph
14 (5) of Subsection B of Section 22-24-5 NMSA 1978 using data
15 from the school district in which the state-chartered charter
16 school is located;

17 B. the amount calculated pursuant to Subparagraph
18 (p) of Paragraph (5) of Subsection B of Section 22-24-5 NMSA
19 1978 shall not be reduced pursuant to Paragraph (6) of that
20 subsection but shall be reduced by the total of all legislative
21 appropriations made after January 1, 2007 for nonoperating
22 purposes either directly to the charter school or to another
23 governmental entity for the purpose of passing the money
24 through directly to the charter school. The reduction shall be
25 made regardless of whether the charter school is a state-

1 chartered charter school at the time of the appropriation or
2 later opts to become a state-chartered charter school; and

3 C. in determining, pursuant to Subparagraph (e) of
4 Paragraph (9) of Subsection B of Section 22-24-5 NMSA 1978,
5 whether the state-chartered charter school is able to pay the
6 portion of the total cost of the capital outlay project that is
7 not funded with grant assistance from the fund, the council may
8 award the grant assistance contingent upon the issuance of
9 charter school bonds."

10 Section 8. Section 22-25-1 NMSA 1978 (being Laws 1975
11 (S.S.), Chapter 5, Section 1) is amended to read:

12 "22-25-1. SHORT TITLE.--~~[This act]~~ Chapter 22, Article 25
13 NMSA 1978 may be cited as the "Public School Capital
14 Improvements Act".

15 Section 9. Section 22-25-3 NMSA 1978 (being Laws 1975
16 (S.S.), Chapter 5, Section 3, as amended) is amended to read:

17 "22-25-3. AUTHORIZATION FOR LOCAL SCHOOL BOARD TO SUBMIT
18 QUESTION OF CAPITAL IMPROVEMENTS TAX IMPOSITION--DISTRIBUTION
19 OF A PORTION OF THE PROCEEDS TO THE CHARTER SCHOOL BONDING
20 FUND.--

21 A. A local school board may adopt a resolution to
22 submit to the qualified electors of the school district the
23 question of whether a property tax should be imposed upon the
24 net taxable value of property allocated to the school district
25 under the Property Tax Code at a rate not to exceed that

1 specified in the resolution for the purpose of capital
2 improvements [~~in the school district~~]. The resolution shall:

3 [A.] (1) identify the capital improvements for
4 which the revenue proposed to be produced will be used, and, if
5 a state-chartered charter school is physically located in the
6 district, shall include a statement that a portion of the
7 revenue will be used for capital improvements at state-
8 chartered charter schools;

9 [B.] (2) specify the rate of the proposed tax,
10 which shall not exceed two dollars (\$2.00) on each one thousand
11 dollars (\$1,000) of net taxable value of property allocated to
12 the school district under the Property Tax Code;

13 [C.] (3) specify the date an election will be
14 held to submit the question of imposition of the tax to the
15 qualified electors of the district; and

16 [D.] (4) limit the imposition of the proposed
17 tax to no more than six property tax years.

18 B. Revenue from a tax approved by the qualified
19 electors on or after July 1, 2007 and attributable to state-
20 chartered charter schools located within the school district
21 shall be distributed by the county treasurer directly to the
22 charter school bonding fund. The amount of tax revenue
23 attributable to each state-chartered charter school shall be
24 determined each year and shall be the same proportion of the
25 revenue as the full-time-equivalent enrollment of the state-

1 chartered charter school on the fortieth day of the prior
2 school year is to the total such enrollment in the district;
3 provided that, in the case of a state-chartered charter school
4 that had not commenced classroom instruction in the prior
5 school year, the proportion shall be based on the estimated
6 full-time-equivalent enrollment of the charter school and the
7 school district on the fortieth day of the current school year,
8 as determined by the department. The secretary shall calculate
9 and notify the county treasurer of the proportion of the
10 revenue to be distributed to the charter school bonding fund."

11 Section 10. A new section of the Public School Capital
12 Improvements Act, Section 22-25-3.1 NMSA 1978, is enacted to
13 read:

14 "22-25-3.1. [NEW MATERIAL] AUTHORIZATION FOR ADDITIONAL
15 MILLAGE.--

16 A. In addition to the tax imposed pursuant to
17 Section 22-25-3 NMSA 1978, a local school board may adopt a
18 resolution to submit to the qualified electors of the school
19 district the question of whether a property tax should be
20 imposed upon the net taxable value of property allocated to the
21 school district under the Property Tax Code at a rate not to
22 exceed that specified in the resolution for the purpose of
23 capital improvements in the school district. The resolution
24 shall:

25 (1) identify the capital improvements for

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1 which the revenue proposed to be produced will be used, and, if
2 a state-chartered charter school is physically located in the
3 district, shall include a statement that a portion of the
4 revenue will be used for capital improvements at state-
5 chartered charter schools;

6 (2) specify the rate of the proposed tax,
7 which shall not exceed one dollar (\$1.00) on each one thousand
8 dollars (\$1,000) of net taxable value of property allocated to
9 the school district under the Property Tax Code;

10 (3) specify the date an election will be held
11 to submit the question of imposition of the tax to the
12 qualified electors of the school district; and

13 (4) limit the imposition of the proposed tax
14 to no more than six property tax years.

15 B. Revenue from a tax authorized by this section
16 and approved by the qualified electors and attributable to
17 state-chartered charter schools located within the school
18 district shall be distributed by the county treasurer directly
19 to the charter school bonding fund. The amount of tax revenue
20 attributable to each state-chartered charter school shall be
21 determined each year and shall be the same proportion of the
22 revenue as the full-time-equivalent enrollment of the state-
23 chartered charter school on the fortieth day of the prior
24 school year is to the total such enrollment in the district;
25 provided that, in the case of a state-chartered charter school

1 that had not commenced classroom instruction in the prior
2 school year, the proportion shall be based on the estimated
3 full-time-equivalent enrollment of the charter school and the
4 school district on the fortieth day of the current school year,
5 as determined by the department. The secretary shall calculate
6 and notify the county treasurer of the proportion of the
7 revenue to be distributed to the charter school bonding fund.

8 C. All provisions of the Public School Capital
9 Improvements Act that apply to the tax imposition provided for
10 in Section 22-25-3 NMSA 1978 apply to the tax imposition
11 provided for in this section except that a tax imposed pursuant
12 to this section shall not be taken into account when
13 calculating the state distribution pursuant to Section 22-25-9
14 NMSA 1978."

15 Section 11. Section 22-25-7 NMSA 1978 (being Laws 1975
16 (S.S.), Chapter 5, Section 7, as amended) is amended to read:

17 "22-25-7. IMPOSITION OF TAX--LIMITATION ON
18 EXPENDITURES.--If as a result of an election held in accordance
19 with the Public School Capital Improvements Act a majority of
20 the qualified electors voting on the question vote in favor of
21 the imposition of the tax, the tax rate shall be certified,
22 unless the local school board requests by resolution that a
23 rate be discontinued, by the department of finance and
24 administration at the rate specified in the resolution
25 authorized under Section 22-25-3 or 22-25-3.1 NMSA 1978 or at

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1 any lower rate required by operation of the rate limitation
2 provisions of Section 7-37-7.1 NMSA 1978 upon the rate
3 specified in the resolution and be imposed at the rate
4 certified in accordance with the provisions of the Property Tax
5 Code. The revenue produced by the tax and, except as provided
6 in Subsection F, G or H of Section 22-25-9 NMSA 1978, any state
7 distribution [~~resulting~~] to the district under the Public
8 School Capital Improvements Act shall be expended only for the
9 capital improvements specified in the authorizing resolution."

10 Section 12. Section 22-25-9 NMSA 1978 (being Laws 1975
11 (S.S.), Chapter 5, Section 9, as amended) is amended to read:

12 "22-25-9. STATE DISTRIBUTION TO SCHOOL DISTRICT IMPOSING
13 TAX UNDER CERTAIN CIRCUMSTANCES.--

14 A. Except as provided in Subsection C, [~~or~~] G or H
15 of this section, the secretary shall distribute to any school
16 district that has imposed a tax [~~under the Public School~~
17 ~~Capital Improvements Act~~] authorized pursuant to Section
18 22-25-3 NMSA 1978 an amount from the public school capital
19 improvements fund that is equal to the amount by which the
20 revenue estimated to be received from the imposed tax, at the
21 rate authorized pursuant to Section 22-25-3 NMSA 1978 and
22 certified by the department of finance and administration in
23 accordance with Section 22-25-7 NMSA 1978, assuming a one
24 hundred percent collection rate, is less than an amount
25 calculated by multiplying the school district's first forty

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1 days' total program units by the amount specified in Subsection
2 B of this section and further multiplying the product obtained
3 by the tax rate approved by the qualified electors in the most
4 recent election on the question of imposing a tax under the
5 Public School Capital Improvements Act. The distribution shall
6 be made each year that the tax is imposed in accordance with
7 Section 22-25-7 NMSA 1978; provided that no state distribution
8 from the public school capital improvements fund may be used
9 for capital improvements to any administration building of a
10 school district. In the event that sufficient funds are not
11 available in the public school capital improvements fund to
12 make the state distribution provided for in this section, the
13 dollar per program unit figure shall be reduced as necessary.

14 B. In calculating the state distribution pursuant
15 to Subsection A of this section, the following amounts shall be
16 used:

17 (1) the amount calculated pursuant to
18 Subsection D of this ~~[subsection]~~ section per program unit; and

19 (2) an additional amount certified to the
20 secretary by the public school capital outlay council. No
21 later than June 1 of each year, the council shall determine the
22 amount needed in the next fiscal year for public school capital
23 outlay projects pursuant to the Public School Capital Outlay
24 Act and the amount of revenue, from all sources, available for
25 the projects. If, in the sole discretion of the council, the

1 amount available exceeds the amount needed, the council may
2 certify an additional amount pursuant to this paragraph;
3 provided that the sum of the amount calculated pursuant to this
4 paragraph plus the amount in Paragraph (1) of this subsection
5 shall not result in a total statewide distribution that, in the
6 opinion of the council, exceeds one-half of the total revenue
7 estimated to be received from taxes imposed pursuant to the
8 Public School Capital Improvements Act.

9 C. For any fiscal year, notwithstanding the amount
10 calculated to be distributed pursuant to Subsections A and B of
11 this section, except as provided in Subsection G or H of this
12 section, a school district, the voters of which have approved a
13 tax pursuant to Section 22-25-3 NMSA 1978, shall not receive a
14 distribution less than the amount calculated pursuant to
15 Subsection E of this section, multiplied by the school
16 district's first forty days' total program units and further
17 multiplying the product obtained by the approved tax rate.

18 D. For purposes of calculating the distribution
19 pursuant to Subsection B of this section, the amount used in
20 Paragraph (1) of that subsection shall equal sixty dollars
21 (\$60.00) in fiscal year 2006 and in each subsequent fiscal year
22 shall equal the amount for the previous fiscal year adjusted by
23 the percentage increase between the next preceding calendar
24 year and the preceding calendar year of the consumer price
25 index for the United States, all items, as published by the

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1 United States department of labor.

2 E. For purposes of calculating the minimum
3 distribution pursuant to Subsection C of this section, the
4 amount used in that subsection shall equal five dollars (\$5.00)
5 through fiscal year 2005 and in each subsequent fiscal year
6 shall equal the amount for the previous fiscal year adjusted by
7 the percentage increase between the next preceding calendar
8 year and the preceding calendar year of the consumer price
9 index for the United States, all items, as published by the
10 United States department of labor.

11 F. In expending distributions made pursuant to this
12 section, school districts shall give priority to maintenance
13 projects, including payments under contracts for maintenance
14 support services. In addition, distributions made pursuant to
15 this section may be expended by school districts for the school
16 district portion of the total project cost for roof repair or
17 replacement required by Section 22-24-4.3 NMSA 1978.

18 G. If a serious deficiency in a roof of a public
19 school facility has been corrected pursuant to Section
20 22-24-4.4 NMSA 1978 and the school district has refused to pay
21 its share of the cost as determined by that section, until the
22 public school capital outlay fund is reimbursed in full for the
23 share attributed to the district, the distribution calculated
24 pursuant to this section shall not be made to the school
25 district but shall be made to the public school capital outlay

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1 fund.

2 H. An amount attributable to state-chartered
3 charter schools located in a school district shall not be
4 distributed to the school district but shall be distributed by
5 the secretary from the public school capital improvements fund
6 to the charter school bonding fund. The total amount that
7 would otherwise be distributed to a school district pursuant to
8 this section, without considering the provisions of this
9 subsection, shall be reduced by the amount attributable to the
10 state-chartered charter schools located in that school
11 district. The amount attributable to each state-chartered
12 charter school shall be determined each year as follows:

13 (1) the full-time-equivalent enrollment of the
14 state-chartered charter school on the fortieth day of the prior
15 school year is divided by the total such enrollment at all
16 public schools in the district; provided that, in the case of a
17 state-chartered charter school that had not commenced classroom
18 instruction in the prior school year, the estimated
19 full-time-equivalent enrollment of the charter school and the
20 school district on the fortieth day of the current school year
21 shall be used, as determined by the department; and

22 (2) the amount attributable to the state-
23 chartered charter school equals the quotient calculated in
24 Paragraph (1) of this subsection multiplied by the total amount
25 that would otherwise be distributed to the school district

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1 pursuant to this section, without considering the provisions of
2 this subsection.

3 [H.] I. In making distributions pursuant to this
4 section, the secretary shall include such reporting
5 requirements and conditions as are required by rule of the
6 public school capital outlay council. The council shall adopt
7 such requirements and conditions as are necessary to ensure
8 that the distributions are expended in the most prudent manner
9 possible and are consistent with the original purpose as
10 specified in the authorizing resolution. Copies of reports or
11 other information received by the secretary in response to the
12 requirements and conditions shall be forwarded to the council."

13 Section 13. EFFECTIVE DATE.--The effective date of the
14 provisions of this act is July 1, 2007.

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SENATE BILL

48TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2007

INTRODUCED BY

FOR THE PUBLIC SCHOOL CAPITAL OUTLAY OVERSIGHT TASK FORCE

AN ACT

RELATING TO PROCUREMENT; AMENDING THE PROCUREMENT CODE TO
PROVIDE FOR CONSTRUCTION MANAGER AT RISK CONTRACTS IN THE
CONSTRUCTION OF EDUCATIONAL FACILITIES; ENACTING THE
EDUCATIONAL FACILITY CONSTRUCTION MANAGER AT RISK ACT;
PROVIDING PROCEDURES FOR SELECTING A CONSTRUCTION MANAGER AT
RISK; DECLARING AN EMERGENCY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 13-1-102 NMSA 1978 (being Laws 1984,
Chapter 65, Section 75) is amended to read:

"13-1-102. COMPETITIVE SEALED BIDS REQUIRED.--All
procurement shall be achieved by competitive sealed bid
pursuant to Sections ~~[76 through 83 of the Procurement Code]~~
13-1-103 through 13-1-110 NMSA 1978, except procurement
achieved pursuant to the following sections of the Procurement

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1 Code:

2 A. Sections [~~84 through 97~~] 13-1-111 through
3 13-1-122 NMSA 1978, competitive sealed proposals;

4 B. Section [~~98~~] 13-1-125 NMSA 1978, small
5 purchases;

6 C. Section [~~99~~] 13-1-126 NMSA 1978, sole source
7 procurement;

8 D. Section [~~100~~] 13-1-127 NMSA 1978, emergency
9 procurements;

10 E. Section [~~102~~] 13-1-129 NMSA 1978, existing
11 contracts; [~~and~~]

12 F. Section [~~103~~] 13-1-130 NMSA 1978, purchases from
13 antipoverty program businesses; and

14 G. the Educational Facility Construction Manager At
15 Risk Act."

16 Section 2. Section 13-1-111 NMSA 1978 (being Laws 1984,
17 Chapter 65, Section 84, as amended) is amended to read:

18 "13-1-111. COMPETITIVE SEALED PROPOSALS--CONDITIONS FOR
19 USE.--

20 A. Except as provided in Subsection G of Section
21 13-1-119.1 NMSA 1978, when a state agency or a local public
22 body is procuring professional services or a design and build
23 project delivery system, or when the state purchasing agent, a
24 central purchasing office or a designee of either officer makes
25 a written determination that the use of competitive sealed

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1 bidding for items of tangible personal property or services is
2 either not practicable or not advantageous to the state agency
3 or a local public body, a procurement shall be effected by
4 competitive sealed proposals.

5 B. Competitive sealed proposals may also be used
6 for contracts for construction and facility maintenance,
7 service and repairs.

8 C. Competitive sealed proposals may also be used
9 for construction manager at risk contracts if a three-step
10 selection procedure is used pursuant to the Educational
11 Facility Construction Manager At Risk Act.

12 [~~E-~~] D. Competitive qualifications-based proposals
13 shall be used for procurement of professional services of
14 architects, engineers, landscape architects, construction
15 managers and surveyors who submit proposals pursuant to
16 Sections 13-1-120 through 13-1-124 NMSA 1978.

17 [~~D-~~] E. Competitive sealed proposals shall also be
18 used for contracts for the design and installation of measures
19 the primary purpose of which is to conserve natural resources,
20 including guaranteed utility savings contracts entered into
21 pursuant to the Public Facility Energy Efficiency and Water
22 Conservation Act.

23 [~~E-~~] F. The governor shall appoint an advisory
24 committee to provide assistance in development of rules for the
25 implementation of this section. The advisory committee shall

1 include one representative from the New Mexico building and
2 construction trades council, American federation of labor and
3 congress for industrial organizations and a representative of:

4 (1) the associated general contractors - New
5 Mexico building branch;

6 (2) the New Mexico chapter of the national
7 electrical contractors association;

8 (3) the New Mexico sheet metal contractors
9 association;

10 (4) the mechanical contractors association of
11 New Mexico;

12 (5) the New Mexico association of counties;

13 (6) the New Mexico municipal league;

14 (7) the public education department;

15 (8) the construction industries commission;

16 (9) the Rio Grande underground contractors
17 association;

18 (10) the American subcontractors association
19 of New Mexico;

20 (11) the higher education community; and

21 (12) the general public, who is not associated
22 with the construction industry and who will serve as chair of
23 the committee."

24 Section 3. A new section of the Procurement Code, Section
25 13-1-124.1 NMSA 1978, is enacted to read:

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1 "13-1-124.1. [NEW MATERIAL] SHORT TITLE.--Sections
2 13-1-124.1 through 13-1-124.5 NMSA 1978 may be cited as the
3 "Educational Facility Construction Manager At Risk Act".

4 Section 4. A new section of the Procurement Code, Section
5 13-1-124.2 NMSA 1978, is enacted to read:

6 "13-1-124.2. [NEW MATERIAL] APPLICABILITY.--The
7 provisions of the Educational Facility Construction Manager At
8 Risk Act apply to contracts for the construction of educational
9 facilities if the governing body chooses, pursuant to the
10 provisions of that act, to use the services of a construction
11 manager at risk."

12 Section 5. A new section of the Procurement Code, Section
13 13-1-124.3 NMSA 1978, is enacted to read:

14 "13-1-124.3. [NEW MATERIAL] DEFINITIONS.--As used in the
15 Educational Facility Construction Manager At Risk Act:

16 A. "construction manager at risk" means a person
17 who, pursuant to a contract with a governing body, provides the
18 preconstruction services and construction management required
19 in a construction manager at risk delivery method;

20 B. "construction manager at risk delivery method"
21 means a construction method for an educational facility wherein
22 a construction manager at risk provides a range of
23 preconstruction services and construction management, including
24 cost estimation and consultation regarding the design of the
25 building project, preparation and coordination of bid packages,

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1 scheduling, cost control, value engineering and, while acting
2 as the general contractor during construction, detailing the
3 trade contractor scope of work, holding the trade contracts and
4 other subcontracts, prequalifying and evaluating trade
5 contractors and subcontractors and providing management and
6 construction services, all at a guaranteed maximum price;

7 C. "educational facility" means a public school,
8 including a locally chartered or state-chartered charter school
9 or a facility of a state educational institution listed in
10 Section 6-17-1.1 NMSA 1978;

11 D. "governing body" means:

12 (1) the public school facilities authority if
13 the authority is the using agency that requires the
14 construction of an educational facility;

15 (2) a local school board if the board is the
16 using agency that requires the construction of an educational
17 facility;

18 (3) the governing body of a charter school if
19 the governing body is the using agency that requires the
20 construction of an educational facility; or

21 (4) the governing body of a state educational
22 institution if the governing body is the using agency that
23 requires the construction of an educational facility; and

24 E. "guaranteed maximum price" means the maximum
25 amount to be paid by the governing body for the construction of

1 the educational facility, including the cost of the work, the
2 general conditions and the fees charged by the construction
3 manager at risk."

4 Section 6. A new section of the Procurement Code, Section
5 13-1-124.4 NMSA 1978, is enacted to read:

6 "13-1-124.4. [NEW MATERIAL] CONSTRUCTION MANAGER AT RISK
7 DELIVERY METHOD AUTHORIZED--MULTIPHASE SELECTION PROCEDURE.--

8 A. A construction manager at risk delivery method
9 may be used when a governing body determines that it is in its
10 interest to use that method on a specific educational facility
11 construction project, provided that the construction manager at
12 risk shall be selected pursuant to the provisions of this
13 section.

14 B. The governing body shall form a selection
15 committee of at least three members with at least one member
16 being an architect or engineer. The selection committee shall
17 develop an evaluation process, including a multiphase procedure
18 consisting of two or three steps. A two-step procedure shall
19 include a request for qualifications and an interview. A
20 three-step procedure shall consist of a request for
21 qualifications, a request for proposals and an interview.

22 C. A request for qualifications shall be published
23 in accordance with Section 13-1-104 NMSA 1978 and shall include
24 at a minimum the following:

25 (1) a statement of the minimum qualifications

1 for the construction manager at risk, including the
2 requirements for:

3 (a) a contractor's license for the type
4 of work to be performed, issued pursuant to the Construction
5 Industries Licensing Act;

6 (b) registration pursuant to Section
7 13-4-13.1 NMSA 1978; and

8 (c) a minimum bond capacity; and

9 (2) a statement of the scope of work to be
10 performed, including:

11 (a) the location of the project and the
12 total amount of money available for the project;

13 (b) a proposed schedule, including a
14 deadline for submission of the statements of qualification;

15 (c) specific project requirements and
16 deliverables;

17 (d) the composition of the selection
18 committee;

19 (e) a description of the process the
20 selection committee shall use to evaluate qualifications;

21 (f) a proposed contract; and

22 (g) a detailed statement of the
23 relationships and obligations of all parties, including the
24 construction manager at risk, agents of the governing body,
25 such as an architect or engineer, and the governing body.

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1 D. The selection committee shall evaluate the
2 statements of qualifications submitted and determine the
3 persons that qualify for the construction manager at risk. If
4 the selection committee has chosen a three-step procedure, the
5 committee shall issue a request for proposals to the persons
6 that qualify. If the selection committee has chosen a two-step
7 procedure based upon the statements of qualification, the
8 committee shall rank the persons that qualify and interview up
9 to three of the highest-ranked proposers.

10 E. In a three-step procedure, the selection
11 committee shall issue a request for proposals and evaluate the
12 proposals pursuant to Sections 13-1-112 through 13-1-117 NMSA
13 1978 except that:

14 (1) the request for proposals shall be sent
15 only to those determined to be qualified pursuant to Subsection
16 D of this section;

17 (2) the selection committee shall evaluate the
18 proposals and conduct interviews with up to three of the
19 highest-ranked proposers instead of negotiating with
20 responsible offerors found to be reasonably likely to be
21 selected; and

22 (3) pursuant to Subsection F of this section,
23 the contract award shall be made after the interviews.

24 F. After conducting interviews with the highest-
25 ranked persons and after considering the factors listed in

1 Subsection G of this section, the selection committee shall
2 recommend to the governing body the proposer that will be most
3 advantageous to the governing body. Upon receipt of the
4 recommendation, the governing body may award the construction
5 manager at risk contract to the person recommended by the
6 selection committee, reject the recommendation and order the
7 selection committee to repeat the selection process or reject
8 the recommendation and appoint a new selection committee to
9 repeat the selection process.

10 G. In evaluating and ranking statements of
11 qualifications, proposals and results of interviews, and in the
12 final recommendation of a construction manager at risk, the
13 selection committee shall consider:

14 (1) the proposer's experience with
15 construction of similar types of projects;

16 (2) the qualifications and experience of the
17 proposer's personnel and consultants and the role of each in
18 the project;

19 (3) the plan for management actions to be
20 undertaken on the project, including services to be rendered in
21 connection with safety and the safety plan for the project;

22 (4) the proposer's experience with the
23 construction manager at risk method; and

24 (5) all other selection criteria, as stated in
25 the request for qualifications and the request for proposals.

1 H. Nothing in this section precludes the selection
2 committee from recommending the termination of the selection
3 procedure pursuant to Section 13-1-131 NMSA 1978 and repeating
4 the selection process pursuant to this section. Any material
5 received by the selection committee in response to a
6 solicitation that is terminated shall not be disclosed so as to
7 be available to competing proposers.

8 I. The selection committee shall make the names of
9 all proposers and the names of all proposers selected for
10 interview available for public inspection along with the
11 selection committee's final ranking and evaluation scores.
12 Proposers who were interviewed but not selected for contract
13 award shall be notified in writing within fifteen days of the
14 award."

15 Section 7. A new section of the Procurement Code, Section
16 13-1-124.5 NMSA 1978, is enacted to read:

17 "13-1-124.5. [NEW MATERIAL] RESPONSIBILITIES OF
18 CONSTRUCTION MANAGER AT RISK FOLLOWING AWARD OF PROJECT.--

19 A. The contract with the construction manager at
20 risk shall specify:

21 (1) the guaranteed maximum price; and
22 (2) the percentage of the guaranteed price
23 that the construction manager at risk will perform with its own
24 work force.

25 B. The construction manager at risk, in cooperation

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1 with the governing body, shall seek to develop subcontractor
2 interest in the project and shall furnish to the governing body
3 and any architect or engineer representing the governing body a
4 list of subcontractors who state in writing that they are a
5 responsible bidder or a responsible offeror, including
6 suppliers who are to furnish materials or equipment fabricated
7 to a special design and from whom proposals or bids will be
8 requested for each principal portion of the project. The
9 governing body and its architect or engineer shall promptly
10 reply in writing to the construction manager at risk if the
11 governing body, architect or engineer knows of any objection to
12 a listed subcontractor or supplier, provided that the receipt
13 of the list shall not require the governing body, architect or
14 engineer to investigate the qualifications of proposed
15 subcontractors or suppliers, nor shall it waive the right of
16 the governing body, architect or engineer later to object to or
17 reject any proposed subcontractor or supplier.

18 C. The construction manager at risk shall:

- 19 (1) conduct pre-bid or pre-proposal meetings;
20 (2) advise the governing body about bidding or
21 proposals;
22 (3) enter into contracts; and
23 (4) assist the governing body in evaluating
24 submissions by responsible bidders and offerors."

25 Section 8. EMERGENCY.--It is necessary for the public

underscored material = new
[bracketed material] = delete

1 peace, health and safety that this act take effect immediately.

2 - 13 -

25 .164266.2